



# 2005 Court Clerk Training Institute

---

TRAFFIC COURTROOM AND OFFICE  
PROCEDURES



ADMINISTRATIVE OFFICE  
OF THE COURTS

---

EDUCATION DIVISION/CENTER FOR  
JUDICIAL EDUCATION AND RESEARCH

# TABLE OF CONTENTS

## I. GENERAL PROCESSING INFORMATION

### A. THE CASE PROCESS

1.	Definitions.....	1
2.	Most Common Codes Used in Criminal and Traffic Matters.....	2
3.	How Cases are Filed in Superior Court .....	2
4.	How Criminal Cases are Filed at a Felony Trial Level .....	2

### B. ACCUSATORY PLEADINGS & THEIR COMPONENTS

1.	The Pleadings (The Charging Document) .....	3
2.	The Components (PC 950).....	9
3.	Amended Pleadings .....	10

### C. MISCELLANEOUS TRAFFIC CODES

1.	Clerk and Judge.....	11
2.	Traffic Commissioners and Referees.....	11
3.	Vehicle Impoundment.....	12
4.	Owner's Responsibility Citations .....	14
5.	Uniform Bail Schedule .....	14

## **II. DEFENDANT STATUS**

<b>A.</b>	<b>COURTESY NOTICE</b>	
1.	Definition .....	17
2.	Payment Options .....	17
<b>B.</b>	<b>FAILURE TO APPEAR.....</b>	<b>18</b>
<b>C.</b>	<b>CUSTODY STATUS</b>	
1.	Custody Options.....	20
2.	Other Custody Items.....	20
<b>D.</b>	<b>BAIL (PC 1268-1320</b>	
1.	Definition .....	21
2.	Fixing The Amount.....	21
3.	Feloniously Obtained Bail (PC 1275.1).....	22
4.	Types of Bail.....	23
5.	Bail Exoneration (PC 1195).....	24
6.	Bail Forfeiture (PC 1305) .....	24
7.	Own Recognizance Release (PC 1270) .....	26
<b>E.</b>	<b>WARRANTS</b>	
1.	Arrest Warrants .....	28
2.	Bench Warrants.....	29
3.	Attachment of Defaulters – Civil Bench Warrants .....	31

**EXEMPLARS AT END OF SECTION II**

### **III. MINUTE ORDERS**

#### **A. MINUTE ORDERS**

1.	Definition and Statute Requirements .....	32
2.	Minute Order Form (CRC 201) .....	32
3.	Preparation .....	32
4.	Components .....	33
5.	The Particulars .....	34
6.	Recording Time .....	37

## **IV. ARRAIGNMENT, PLEA, AND SENTENCING**

### **A. ARRAIGNMENT**

1.	Definition (PC 988).....	38
2.	Elements.....	38
3.	Six Possible Pleas (PC 1016).....	38
4.	Manual Discovery Orders (PC 1054 et. Seq.).....	40
5.	Setting Future Dates (CRC 227.4) .....	40
6.	Traffic Arraignments .....	41
7.	Written Plea of Not Guilty for Infractions [VC 40519(b)] .....	41

### **B. TRIALS WITH PLEA OF NGI**

1.	Benefits to Parties and the Court .....	43
2.	Time for Filing .....	43
3.	Motion Hearings .....	44
4.	Ex-Parte Motions .....	44
5.	Minute Order Contents .....	45
6.	Pretrial Motion List.....	46
7.	Common Motions .....	47
8.	Pre-Trial Motions by “Case Law” Names .....	48
9.	List of Common Pre-Trial Motions by Category.....	51

### **C. PRE-TRIAL CONFERENCES**

1.	Benefits .....	53
2.	Steps in Negotiation.....	53
3.	Outcome.....	53

### **D. READINESS CONFERENCE OVERVIEW .....**

54

### **E. EVENTS FOR CHANGE OF PLEA**

1.	Court Questions Defendant as to .....	55
2.	Acceptance of Plea.....	56
3.	Waive Time for Sentencing .....	56

### **F. SENTENCING**

1.	Infractions .....	57
2.	Misdemeanors .....	63

### **G. MANDATORY MINIMUM SENTENCE – DRIVING UNDER THE INFLUENCE**

1.	VC 23152 (a) and (b) – 1st Offense.....	73
----	---	----

### **H. 1ST OFFENSE – DUI ENHANCMENTS**

1.	Defendant - Age 18 - 21.....	74
2.	Minor Passengers - Under 14 Years .....	74

3.	Excessive Speed.....	74
4.	Refusal .....	74
<b>I.</b>	<b>MANDATORY MINIMUM SENTENCE – DRIVING UNDER THE INFLUENCE</b>	
1.	VC 232152 (a) and (b) – 2nd Offence .....	75
<b>J.</b>	<b>2ND OFFENSE – DUI ENHANCMENTS</b>	
1.	Defendant Age 18 - 21 Years.....	76
2.	Minor Passengers - Under 14 Years .....	76
3.	Excessive Speed.....	76
4.	Refusal .....	76
<b>K.</b>	<b>MANDATORY MINIMUM SENTENCE – DRIVING UNDER THE INFLUENCE</b>	
1.	VC 23152 (a) and (b) – 3rd Offense .....	77
<b>L.</b>	<b>MANDATORY MINIMUM SENTENCE – DRIVING UNDER THE INFLUENCE</b>	
1.	Defendant Age 18 - 21 Years.....	78
2.	Minor Passengers - Under 14 Years .....	78
3.	Excessive Speed.....	78
4.	Refusal .....	78
<b>M.</b>	<b>FEES, FINES AND PENALTIES</b>	
1.	AIDS Prevention Education (PC 1463.23) .....	79
2.	Appointed Council Registration Fee (PC 987.5) .....	79
3.	Booking Fee [GC 29550 (d), GC 29550.1, GC 29550.2 and GC 29550.3] .....	79
4.	Citation Processing Fee [PC 1463.07; GC 29550(f)] .....	79
5.	Civil Assessment for Failure to Appear or Pay Fine [PC 1214.1(a)] .....	79
6.	Criminal Administrative Screen Fee [PC 1463.07; GC 29550(f)] .....	79
7.	Citation Processing Fee [PC1463.07; GC 29550(f)] .....	80
8.	Criminal Fee Surcharge (PC 1465.79).....	80
9.	Diversion Restitution Fee (PC 1001.90).....	80
10.	DNA Identification Fund Penalty (GC 76104.6).....	80
11.	DUI Restitution (PC 1463.18) .....	80
12.	Lab Service Fee [1463.14(a)-(b)] .....	80
13.	Mandatory Restitution Fine [PC 1202.4(b)] .....	80
14.	Night Court Assessment (VC 42006) .....	81
15.	Penalty Assessments [PC 1464; GC 76000(a); GC 70372; GC70375(b)(1)] .....	81
16.	Prior Conviction Fee [VC 40508.6(a)] .....	81
17.	Probation Costs [PC 1203.1(b)].....	81
18.	Probation Revocation Restitution Fine (PC 1202.44).....	82
19.	Proof of Corrections fee [VC 40611; GC 68084(a)] .....	82
20.	Proposition 36 Assessment Fee [PC 1210.1(a)] .....	82
21.	Seat Belt Assessment (Priors) [VC 27315(h)].....	82
22.	Traffic School Assessment [VC 42007.1(a); VC 11205(a)].....	82

23.	Uniform Bail Schedule [PC 1269(b); VC 40310].....	83
24.	Victim Restitution [PC 1202.4(f)] .....	83
25.	Warrant Assessment [VC 40508.5 or PC 853.7(a)].....	84
26.	Warrant/Hold Assessment [VC 40508.6(b)].....	84

## **V. TRIALS**

<b>A.</b>	<b>SEQUENCE OF TRIAL EVENTS.....</b>	<b>85</b>
<b>B.</b>	<b>JURY TRIALS</b>	
1.	Clerk’s Preparation for Trial .....	86
2.	Motions in Limine.....	87
3.	Oaths .....	88
4.	Jury Selection (CCP 206 and CCP 237) .....	90
5.	Opening Statements .....	94
6.	Evidence Phase .....	95
7.	Closing Argument.....	98
8.	Jury Instruction .....	98
9.	Jury Deliberation.....	99
10.	Verdict/Mistrial.....	100
11.	Post-Verdict Matters .....	102
12.	Setting a Sentencing Date .....	102
13.	Status of Defendant.....	103
<b>C.</b>	<b>COURT TRIALS</b>	
1.	Not Guilty Plea .....	104
2.	Contested Cases .....	104
3.	In Absentia.....	104
4.	Evidence.....	104
5.	Submission.....	104
6.	Infraction Court Trial Checklist.....	104
<b>D.</b>	<b>TRIAL BY DECLARATION</b>	
1.	Applicability of Trial by Declaration.....	106
2.	Court Procedure for Trial by Declaration .....	106

**EXEMPLARS AT END OF SECTION V**



## **VI. OFFICE PROCEDURES**

<b>A.</b>	<b>FILING LEGAL DOCUMENTS/FILE STAMPING .....</b>	<b>108</b>
<b>B.</b>	<b>THE FACSIMILE STAMP .....</b>	<b>109</b>
<b>C.</b>	<b>REGISTER OF ACTIONS .....</b>	<b>109</b>
<b>D.</b>	<b>THE SEAL.....</b>	<b>110</b>
<b>E.</b>	<b>CERTIFIED COPIES .....</b>	<b>112</b>
<b>F.</b>	<b>SUBPEONA/SUBPEONA DUCES TECUM .....</b>	<b>113</b>
<b>G.</b>	<b>CONFIDENTIAL DOCUMENTS/GUIDELINES .....</b>	<b>115</b>
<b>H.</b>	<b>CERTIFICATE OF IDENTITY THEFT (PC 530.6).....</b>	<b>116</b>
<b>I.</b>	<b>WRITS .....</b>	<b>118</b>
<b>J.</b>	<b>ORDER FOR RESTITUTION AND ABSTRACT OF JUDGMENT .....</b>	<b>118</b>
<b>K.</b>	<b>NOTICE OF APPEAL – TRAFFIC INFRACTIONS .....</b>	<b>118</b>

**EXEMPLARS AT END OF SECTION VI**

**A. THE CASE PROCESS**

**1. Definitions**

Criminal Action (PC 683) - the proceeding by which a party charged with a public offense is accused and brought to trial and punishment.

Crime (PC 15) - a public offense committed or omitted in violation of a law forbidding or commanding it, and to which is annexed, upon conviction, either of the following punishments:

Death

Imprisonment in state prison

Fine

Removal from office, or,

Disqualification to hold and enjoy any office of honor, trust or profit in this state.

Infraction - A crime not punishable by imprisonment. If charged with an infraction, a person is not entitled to a trial by jury (PC 19.6). Unless otherwise provided, Vehicle Code violations are infractions. (VC 40000.1) Except as otherwise provided with respect to specified infractions, the penalties for general infractions are as follows:

First offense fine of up to \$100.00

Second offense within one year fine of up to \$200.00

Third or subsequent offense within one year fine of up to \$250.00

A penalty assessment is also added to the base fine. [VC 42001(a)(1)-(3)]

Misdemeanor (PC 17(a), VC 40000.5.- 40000.26) - every other crime or public offense is a misdemeanor except those offenses that are classified as infractions. Misdemeanors are punishable (PC 19) by:

Imprisonment in county jail not to exceed 1 year (or otherwise prescribed by law)

Fine not to exceed \$1,000.00, or

Both.

Felony (PC 17(a), VC 40000.3) - a crime which is punishable with death or by imprisonment in the state prison.

**2. Most Common Codes Used in Criminal and Traffic Matters**

- a. Penal Code
- b. Health and Safety Code
- c. Vehicle Code
- d. Business and Professions Code
- e. Harbor and Navigations Code
- f. Fish and Game Code
- g. California Code of Regulations
- h. City/County Ordinance Violations

**3. How Cases are Filed in Superior Court**

Jurisdiction over Traffic Offenses: There are no “traffic courts” expressly designated as such by statute. Superior courts have jurisdiction over all misdemeanors and infractions committed within the county, except those over which the juvenile court is given jurisdiction [PC 1462(a),(d)]

Preliminary level:

- a. Defendant is arrested and transported in custody to court within 2 days. (Felony and Misdemeanor cases.)
- b. Defendant is arrested and released on his/her own recognizance. (Felony - PC 1318.1(a), (b); Misdemeanor - PC 853.6)
- c. Defendant is arrested and posts bail to appear in court. (Felony and Misdemeanor - PC 1269b)
- d. Defendant is arrested and signs a citation agreeing to appear in court. (Misdemeanor - PC 853.6; Infraction PC 853.5)

**4. How Criminal Cases are filed at Felony Trial Level**

- a. Preliminary Hearing (Held to Answer) - Information
- b. Indictment (Filed in Superior Court) - Grand Jury
- c. Certified Plea (PC 859a)

**B. ACCUSATORY PLEADINGS AND THEIR COMPONENTS**

**1. The Pleadings (The Charging Document)**

a. Notice to Appear (Citation)

- 1) A notice to appear that is filed with the court serves as a verified complaint. Whenever written notice to appear has been delivered and filed with the court, an exact and legible duplicate shall constitute a complaint to which the defendant may plead. [VC 40513(a)]
- 2) In most traffic infraction and misdemeanor cases, by signing a notice to appear, the motorist is released from arrest and does not have to post bail. In most minor violations, the “arrest” is complete when the officer determines that there is probable cause and begins the process of citing the violator to appear in court.
- 3) Must contain true full name, address, driver’s license or ID card number, license number of vehicle, the name and address of registered owner, the offense charged, and the date, time and court in which they must appear. Speed violations must include approximate speed alleged, the maximum speed limit and any other applicable speed limit. [VC 40500(a)-(b), VC 40504(a), VC 40503].
- 4) A notice to appear may be issued based on use of an automatic enforcement system that photographs the vehicle and driver. Notices must be delivered by mail to the registered owner of the vehicle, with a certificate of mailing. { VC 40518(a)}. Notices must contain or be accompanied by, and affidavit of non-liability and information that describes what constitutes non-liability and the effect of executing the affidavit, and instructions for returning the affidavit to the issuing agency [VC 40520(a)].

Notices to appear are limited to the following violations [VC 40518(a)]:

- Failure to comply with a traffic signal (VC 21453, 21455)
- Making an illegal turn at an intersection (VC 22101)
- Driving past a railroad crossing despite a flashing red signal (VC 22451)

**Court Clerk Training Institute 2005**  
**Traffic Courtroom and Office Procedures**

I. General Processing Information

Notice to Appear Citation:

California Highway Patrol										<input type="checkbox"/> MISDEMEANOR	
NOTICE TO CORRECT VIOLATION										<input type="checkbox"/> Traffic <input type="checkbox"/> Nontraffic	
Date of Violation		Time		→ A.M. <input type="checkbox"/> P.M. <input checked="" type="checkbox"/>		Day of Week		Case No.		BB 022626	
1. 03/15/05		1900				S M T W T F S		BB02260212			
Name (First, Middle, Last)										<input type="checkbox"/> Owner's Responsibility (Veh. Code, § 40001)	
2. Jones, Mark											
Address											
3. 415 Orange Street											
City				State		ZIP Code		Juvenile (Phone No.)			
4. Moreno Valley				CA		92222		( )			
Driver Lic. No.				State		Class		Commercial		Age	
5. C0000000				CA				<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		03 / 15 / 22	
Sex		Hair		Eyes		Height		Weight		Race	
6. M		7. BLK		8. BRO		9. 6'11"		10. 120		11. BLK	
Veh. Lic. No. or VIN										State	
7. 2LAKER8										CA	
Yr. of Veh.										Make	
8. 06										9. FORD	
Model										Body Style	
10. Explorer										11. Tan	
Evidence of Financial Responsibility										<input type="checkbox"/> COMMERCIAL VEHICLE (Veh. Code, § 16210(b))	
9. Farmers 1284146										<input type="checkbox"/> HAZARDOUS MATERIAL (Veh. Code, § 262)	
Registered Owner or Lessee										<input type="checkbox"/> Same as Driver	
10. BAA											
Address										<input type="checkbox"/> Same as Driver	
11. City										State	
12. ZIP Code											
Correctable Violation (Veh. Code, § 40510)										<input type="checkbox"/> Booking Required (see reverse)	
Yes No Code and Section										Description	
13. <input checked="" type="checkbox"/> 22349 VC										M	
14. <input type="checkbox"/>										M	
15. <input type="checkbox"/>										M	
16. <input type="checkbox"/>										M	
Speed Approx.										P.F. Max. Spd.	
17. > 75										18. 85	
Veh. Lim.										Safe	
19. Y										20. Y	
Location of Violation(s)										City/County of Occurrence	
18. a) Marshall and Linden										Moreno Valley	
Comments (Weather, Road & Traffic Condition)										<input type="checkbox"/> Accident	
8. DRY										9. B	
<input type="checkbox"/> Violations not committed in my presence, declared on information and belief.											
I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct.											
21. <u>Mark Jones</u>										Serial No.	
Arresting or Citing Officer										Date & Off	
22. <u>/ /</u>										Serial No.	
Date										Date & Off	
Name of Arresting Officer, not different from Citing Officer											
WITHOUT ADMITTING GUILT, I PROMISE TO APPEAR AT THE TIME AND PLACE INDICATED BELOW.											
23. <u>X</u> Signature											
24. WHEN: ON OR BEFORE THIS DATE: <u>5/15/05</u>										Time: <u>9AM</u> <u>9PM</u>	
WHAT TO DO: FOLLOW THE INSTRUCTIONS ON THE REVERSE.										Time: <u>9AM</u> <u>9PM</u>	
25. WHERE: (Name of court(s))											
(Section(s) or division(s), room no(s))											
(Street address(es))											
(Phone No.)											
26. <input type="checkbox"/> To be notified										<input checked="" type="checkbox"/> You may arrange with the clerk to appear at night or on the court	
										DEFENDANT COPY	
Judicial Council of California Form										BEE RB/ERBE	
Rev. 09-20-05 (Veh. Code, §§ 40500(b), 40513(b), 40522, 40600; Pen. Code, § 265.5)										TR-130	

**Court Clerk Training Institute 2005**  
**Traffic Courtroom and Office Procedures**

**I. General Processing Information**

Notice to Appear Citation (Reverse side of the defendant's copy)

<b>IMPORTANT — READ CAREFULLY</b>				
<b>WARNING:</b> If you fail to appear in court as you have promised, you may be arrested and punished by 6 MONTHS IN JAIL AND/OR A \$1,000 FINE regardless of the disposition of the original charge. (Veh. Code, § 40508 or Pen. Code, § 853.7.) In addition, any person who fails to appear as provided by law may be deemed to have elected to have a trial by written declaration (in absentia) pursuant to Vehicle Code section 40903(a) upon any alleged infraction, as charged by the arresting/citing officer.				
<b>JUVENILE:</b> If you were under age 18 at the time the citation was issued, you must appear in court with your parent or guardian.				
<b>COURTESY NOTICE:</b> A courtesy notice <b>may</b> be mailed to the address shown on your citation, indicating the required deposit of money (bail) that may be forfeited instead of your appearing in court. If you do not receive such courtesy notice, you are still required to comply with the items below by the appearance date.				
You are required to appear at court for a misdemeanor violation. For all violations, your court date/time/place are on the front of this notice to appear. Have the citation with you when contacting the court. In all infraction cases, you must do one or more of the following for each violation:				
<div style="display: flex; justify-content: space-between;"><div><ul style="list-style-type: none"><li>• Pay the fine (bail).</li><li>• Appear in court.</li><li>• Contest the violation.</li></ul></div><div><ul style="list-style-type: none"><li>• Correct the violation (traffic cases, when applicable).</li><li>• Request traffic school (traffic cases, when applicable).</li><li>• Request trial by written declaration (traffic cases).</li></ul></div></div>				
If you do not do one of the above actions, then “failure to appear” charge will be filed against you (Veh. Code, § 40508(a)) and your driver license may be withheld, suspended, or revoked. In some courts you may be charged an amount in addition to the bail amount and the case may be turned over to a collection agency. (Pen. Code, § 1214.1.)				
<b>1. If you do NOT contest the violation:</b>				
<b>a. (Pay the bail amount)</b> Contact the court for bail information. You will not have to appear in court. You will be convicted of the violation, and it will appear on your record at the Department of Motor Vehicles (DMV). A point count may be charged to your DMV record and your insurance may be adversely affected.				
<b>b. (Traffic school)</b> You may be able to avoid the point count by completing traffic school. You must pay the bail amount as a fee, and you may have to pay other fees. Contact the court to request traffic school.				
<b>c. (Correctable violations)</b> If the “Yes” box is checked on the front of your ticket, the violation is correctable. Upon correction of the violation, have a law enforcement officer or an authorized inspection/installation station agent sign below. (Veh. Code, § 40616.) Registration and driver license violations may also be certified as corrected at an office of the DMV or by any clerk or deputy clerk of a court. The violation will be dismissed by the court after PROOF OF CORRECTION and payment of a transaction fee are presented to the court by mail or in person by the appearance date. Violations of Vehicle Code section 16028 (automobile liability insurance) will be dismissed <b>only</b> upon (1) your <b>showing or mailing to the court</b> evidence of financial responsibility valid at the time this notice to appear was issued, and (2) your payment of a transaction fee.				
<b>CERTIFICATE OF CORRECTION (MUST BE RETURNED TO COURT)</b>				
Section(s) Violated	Signature of Person Certifying Correction	Serial No.	Agency	Date
<b>2. If you contest the violation (select a or b):</b>				
<b>a. (Court trial)</b> Send a certified or registered letter postmarked not later than five days prior to the appearance date or come to the court by the appearance date to request a court trial on a future date when an officer and any witnesses will be present. <b>You will be required to submit the bail amount. —OR—</b>				
<b>b. (Trial by written declaration (traffic infractions))</b> Send a certified or registered letter postmarked not later than five days prior to the appearance date or come to the court on or before the appearance date to request a trial by written declaration. <b>Submit the bail amount.</b> You will be given forms to allow you to write a statement and to submit other evidence without appearing in court. An officer will also submit a statement. The judicial officer will consider the evidence and decide the case.				
<b>3</b> Make check/money order payable to <b>Clerk of the Court</b> . Write your citation number and driver license number on your check or money order. You may pay in person, <b>by mail, or by phone.</b>				
<b>4.</b> If “Booking Required” is checked you must appear for booking on a weekday prior to your court date at: _____ between the hours of _____ and _____ and bring the signed verification to your court appearance. Call _____ for more information.				
<b>Booking Verification:</b> I declare under penalty of perjury under the laws of the State of California that _____ was booked on _____				
Defendant's name	Date	Officer	Serial No.	

The Officer or  
designated  
agency may sign  
off corrections.

b. Notice to Correct

- 1) A notice to correct violation is issued when a person is arrested (cited) for any of the following infractions [VC 40610(a)]:
  - a) A registration infraction.
  - b) A driver's license infraction relating to possession of a driver's license.
  - c) Section 21201, relating to bicycle equipment
  - d) An infraction involving an equipment violation [VC 40303.5(a)-(d)]
- 2) The notice must contain an estimate of the reasonable time required for correction and proof of correction submitted to the issuing agency, not to exceed 30 days. [VC 40610(d)]
- 3) If proof of correction is not received within the time specified, the issuing agency may deliver the notice to correct to the court with a certification the proof has not been received. If submitted on a form approved by the Judicial Council, the promise to correct and the certification constitute a complaint. (VC 40618)
- 4) Any person willfully violating a written promise to correct or willfully failing to deliver proof of correction of violation is guilty of a misdemeanor. (VC 40616)

**Court Clerk Training Institute 2005**  
*Traffic Courtroom and Office Procedures*

I. General Processing Information

Notice to Correct Citation:

California Highway Patrol NOTICE TO CORRECT VIOLATION										<input type="checkbox"/> Traffic <input type="checkbox"/> Nontraffic		BB 022686	
Date of Violation		Time		- AM <input checked="" type="checkbox"/> PM		Day of Week		S M T W T F S		Case No.			
1. 03 / 15 / 05		0800								BB022686			
Name (First, Middle, Last)													
2. Jones, Mark													
Address													
3. 415 Orange Street													
City				State		ZIP Code							
4. Moreno Valley				CA		92222							
Driver Lic. No.				State		Class		Commercial		Age			
5. C0000000				CA				<input type="checkbox"/> Yes <input type="checkbox"/> No		03 / 15 / 22			
Sex		Hair		Eyes		Height		Weight		Race			
6. M		BLK		BRO		6' 11"		120		BLK			
Other Description													
Vehicle License													
2H0TT													
State													
CA													
Yr. of Veh.		Make		Model		Body Style		Color					
8. 06		FORD		Explorer				Tan					
Bulbance of Financial Responsibility													
9. Farmer's 1234146													
Registered Owner or Lessee													
10. BAA													
Address													
11. Same as Driver													
City													
State													
ZIP Code													
12. Same as Driver													
Correctable Violation (Veh. Code, § 40510) <input type="checkbox"/> Booking Required (see reverse)													
Yes		No		Code and Section		Description		Misdemeanor or Infraction (Circle)					
<input checked="" type="checkbox"/>		<input type="checkbox"/>		26710		Defective windshield		M		I			
<input checked="" type="checkbox"/>		<input type="checkbox"/>						M		I			
<input checked="" type="checkbox"/>		<input type="checkbox"/>						M		I			
<input checked="" type="checkbox"/>		<input type="checkbox"/>						M		I			
Speed Approx.		P.F. Max Spd.		Veh. Unit		Date		Radar		<input type="checkbox"/> Continuation Form Issued			
13. > 75		85						Y		N			
Location of Violation(s)													
City/County of Occurrence													
State/County of Occurrence													
City/County of Occurrence													
Moreno Valley													
Comments (Weather, Road & Traffic Conditions)													
14. DRY													
<input type="checkbox"/> Accident													
15. B													
I, the undersigned, under penalty of perjury under the laws of the State of California, the foregoing is true and correct.													
16. Arresting or Citing Officer													
Serial No.													
17. Date of Off													
18. Name of Arresting Officer, (if different from Citing Officer)													
Serial No.													
19. Date of Off													
NOTICE													
CORRECT VIOLATIONS IMMEDIATELY CONTINUE OPERATION WITHOUT CORRECTION MAY RESULT IN ARREST INDIVIDUALLY SEE REVERSE FOR CLERK'S INSTRUCTIONS													
I PROMISE TO CORRECT THE VIOLATIONS LISTED ABOVE AND PROVIDE PROOF OF CORRECTION TO THE CHP OFFICE LISTED ON THE REVERSE SIDE WITHIN 30 DAYS													
20. Signature													
Judicial Council of California Form													
Rev. 05-20-05 (Veh. 40510)													
SEE REVERSE													




**Court Clerk Training Institute 2005**  
*Traffic Courtroom and Office Procedures*

---

I. General Processing Information

Notice to Correct (Reverse side of the defendant's copy.

<b>TO BE EXECUTED IN CASE OF FAILURE TO DELIVER PROOF OF CORRECTION</b>	
<small>DEFENDANT HERBIE FAILED TO DELIVER PROOF OF CORRECTION IN VIOLATION OF HIS/HER BOND PROMISE, AND IN VIOLATION OF § 40818 VC</small>	
<small>I CERTIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.</small>	
<small>EXECUTED AT</small> <u>BEAUMONT</u>	<small>CALIFORNIA ON</small> <u>08 18 06</u>
<small>BY:</small> <u>J CABBILLAS</u>	<u>088</u>
<small>PRINT OR TYPE NAME</small>	<small>TITLE</small>
 <small>SIGNATURE</small>	<u>§ 128</u> <small>ID BADGE NUMBER</small>

I. General Processing Information

- c. Complaint - a document submitted by the prosecutor and filed in a limited jurisdiction court that lists and describes the alleged offenses committed by the defendant. (PC 740)
  - Infractions - PC 853.5
  - Misdemeanors - PC 853.6
  - Felonies - PC 806
- d. Information - a document submitted by the prosecutor and filed in a general (unlimited) jurisdiction court which lists and describes the alleged offenses committed by the defendant (PC 949/PC 739).
- e. Indictment - an accusation by a grand jury charging a person with a crime. (PC 889).
- f. Charge - a formal statement of the accusations against a defendant (may be any of the above.)
  - 1) “Wobbler” - An offense that can be charged as a felony or misdemeanor; final plea or imposition of sentence will determine level of offense.
  - 2) “Wobblette” - An offense that can be charged as a misdemeanor or infraction; final plea or imposition of sentence will determine level of offense.

**2. The Components (PC 950)**

- a. The title of the action, specifying the name of the court to which the same is presented, and the names of the parties.
- b. A statement of the public offense or offenses charged therein.
  - 1) Count - each individual accusation of a violation of a code section that is set forth in the accusatory pleading.
  - 2) Enhancement - allegation added to a count which, if proven true, increases the basic sentence for that count.
    - a) Enhancement may define a crime as a serious or violent felony (pc 1192.7(c) series).
    - b) Special circumstances, if proved true, would warrant the death penalty or life imprisonment without the possibility of parole. (pc 190.2 series)
- c) Auto theft with a prior – an allegation that the defendant has been previously convicted of auto theft under vc 10851, or felony grand theft of a vehicle, motor vehicle, or construction

I. General Processing Information

equipment as defined in the penal code, or a vessel as defined in the harbor and navigation code. A subsequent conviction of this theft will result in additional sentencing penalties, specifically, imprisonment in the state prison for a term of two, three, or four years, and a fine of \$10,000. (pc 666.5)

- 3) Misdemeanor Prior – an allegation added to a case based on previous misdemeanor convictions which, if proven, increases the basic sentence or makes the subsequent filing a felony. Types include:

- i) VC 23152(a), (b) – Driving under the influence of alcohol or drugs (4th offense = felony filing) within 10 years.
- i) VC 23153(a), (b) – DUI and causing bodily injury (3rd offense = felony filing)
- ii) VC 14601(A) – Driving under suspended license for reckless driving
- iii) VC 14601.1(A) – Driving under suspended license
- iv) VC 14601.2(a), (b) – Driving under suspended license for driving under the influence
- v) VC 14601.4 – Driving under suspended license and causing bodily injury

**3. Amended Pleadings**

- a. An amended accusatory pleading may be filed by the District Attorney (PC 1009.)
- b. The amendment may be effected by:
  - 2) Interlineations (write in change, initial, date of amendment)
  - 3) Filing of amended Complaint, Information, or Indictment
  - 4) Filing of amendment to Information/Indictment

## **C. MISCELLANEOUS TRAFFIC CODES**

### **1. Clerk and Judge**

- a. The clerk of the superior court shall attend each session of the superior court in the county and upon the judges of the court in chambers when required. (GC 69841)
- b. Any act required or permitted to be performed by the clerk of a court may be performed by a judge thereof. (CCP 167)
- c. The clerk of the superior court shall safely keep or dispose of according to law all papers and records filed or deposited in any action or proceeding before the court. (GC 69846)
- d. Only the clerk shall remove and replace papers in the files (CRC 243)

### **2. Traffic Commissioners and Referees**

- a. Article VI, §22 of the California Constitution permits trial courts to appoint officers such as commissioners to perform subordinate judicial duties. A court commissioner or traffic referee has the authority to exercise the same powers and duties as a judge with respect to traffic infractions. [GC 72190, 72401(c)]
- b. With respect to Vehicle Code misdemeanor violations, a commissioner or referee may
  - Fix the amount of bail,
  - Grant continuances
  - Arraign defendants,
  - Hear and recommend orders to be made on demurrers and motions,
  - Take pleas
  - Set cases for hearing or trial,
  - Impose a fine following a plea of guilty or no contest
  - Suspend all or a portion of any fine, and
  - Order a defendant to attend traffic violator school
- c. A commissioner also has the authority to issue and sign bench warrants for the arrest of a defendant who fails to appear or to perform any act required by a court order. [GC 72190.1-2]

**3. Vehicle Impoundment**

- a. A vehicle may be impounded if an officer determines
  - i. that a person was driving a vehicle while his or her driving privilege was suspended or revoked
  - ii. or without ever having been issued a driver's license
  - iii. A vehicle so impounded shall be impounded for 30 days.
  - iv. The impounding agency shall maintain a published telephone number that provides information 24 hours a day regarding the impoundment of vehicles and the rights of a registered owner to request a hearing.
  - v. The registered and legal owner of a vehicle that is removed and seized under subdivision (a) or their agents shall be provided the opportunity for a storage hearing to determine the validity of, or consider any mitigating circumstances attendant to, the storage, in accordance with Section 22852. (c) Any period in which a vehicle is subjected to storage under this section shall be included as part of the period of impoundment ordered by the court under subdivision (a) of Section 14602.5.
- b. An impounding agency shall release a vehicle to the registered owner or his or her agent prior to the end of 30 days' impoundment under any of the following circumstances:
  - i. When the vehicle is a stolen vehicle.
  - ii. When the vehicle is subject to bailment and is driven by an unlicensed employee of a business establishment, including a parking service or repair garage
  - iii. When the license of the driver was suspended or revoked for an offense other than those included in Article 2 (commencing with Section 13200) of Chapter 2 of Division 6 or Article 3 (commencing with Section 13350) of Chapter 2 of Division 6.
  - iv. When the vehicle was seized under this section for an offense that does not authorize the seizure of the vehicle.
  - v. When the driver reinstates his or her driver's license or acquires a driver's license and proper insurance.

I. General Processing Information

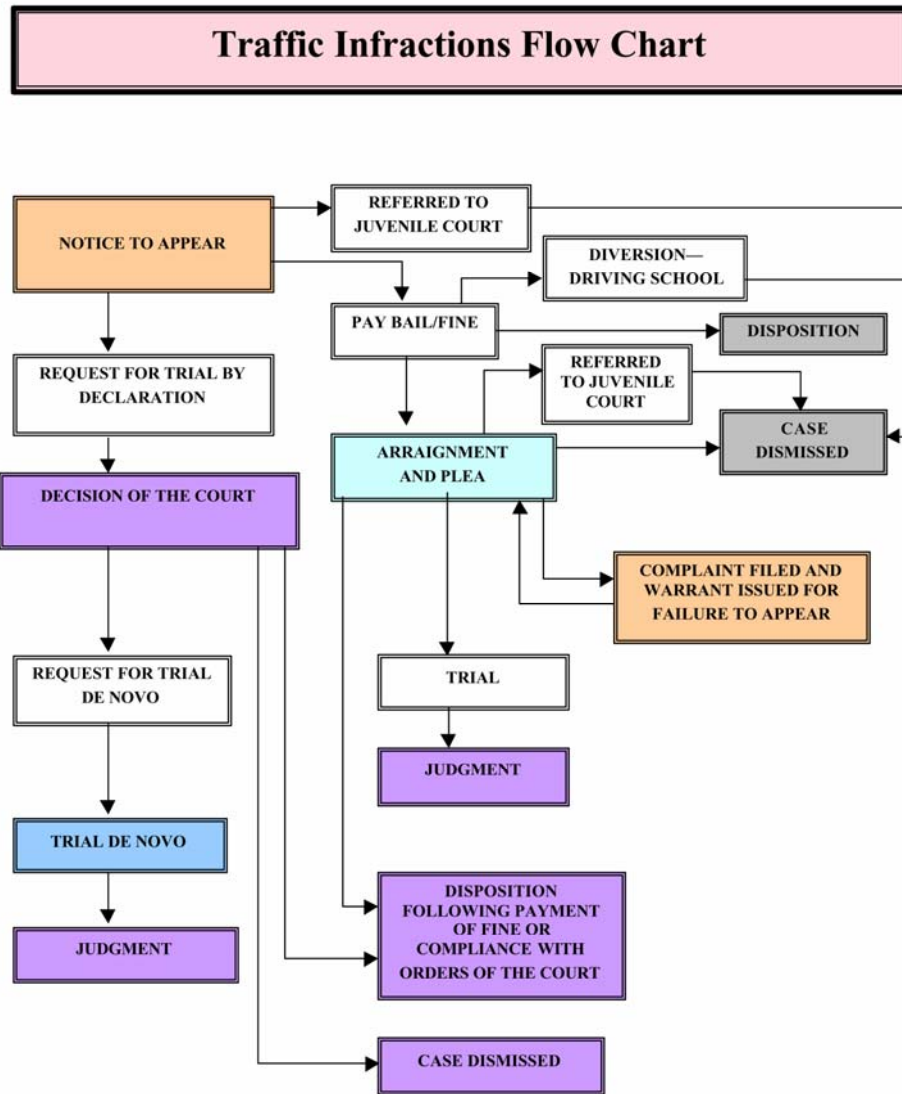
- c. No vehicle shall be released pursuant to this subdivision without presentation of the registered owner's or agent's currently valid driver's license to operate the vehicle and proof of current vehicle registration, or upon order of a court.
- d. The registered owner or his or her agent is responsible for all towing and storage charges related to the impoundment, and any administrative charges authorized under Section 22850.5. [VC 14602.6]

**4. Owner's Responsibility Citations**

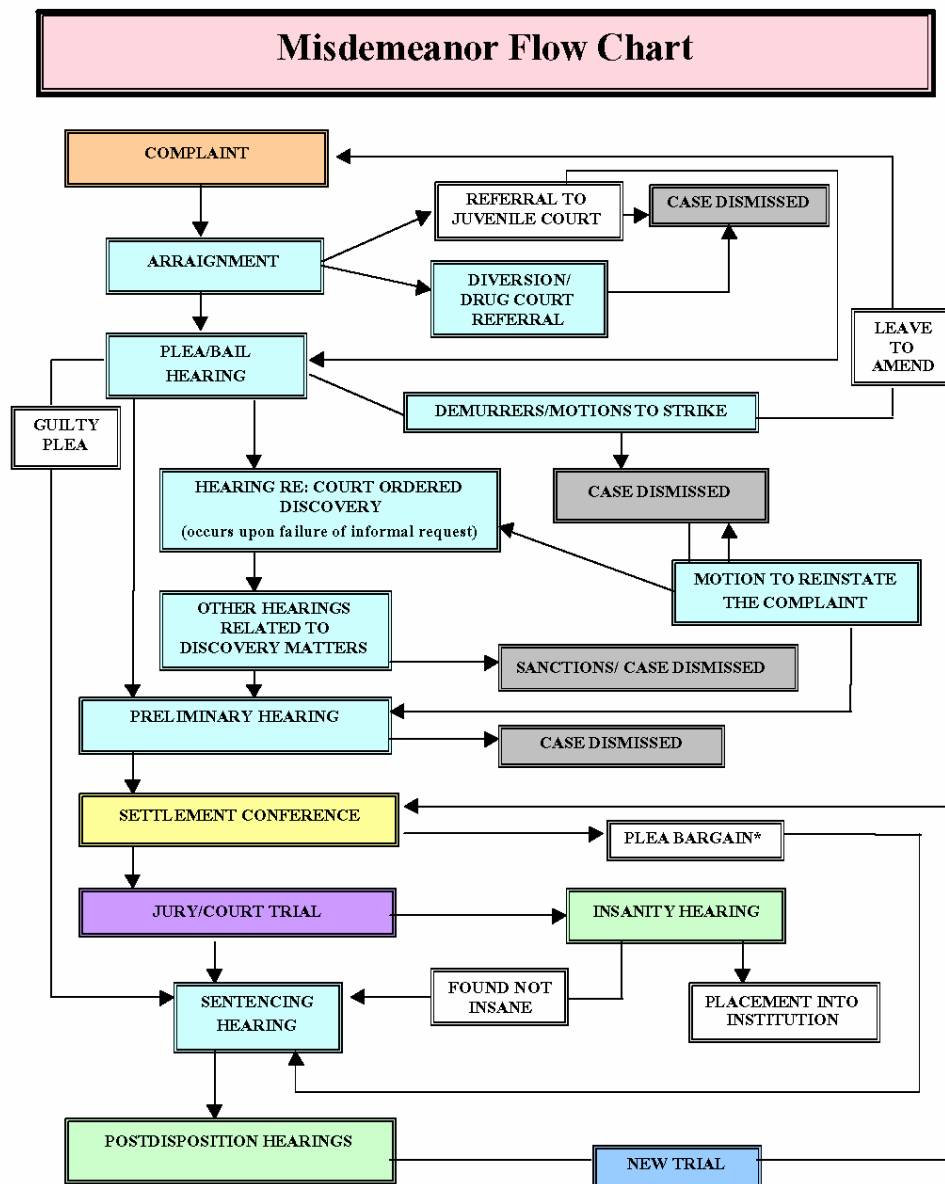
- a. It is unlawful for the owner, or any other person, employing or otherwise directing the driver of any vehicle to cause the operation of the vehicle up on a highway in any matter contrary to law. [VC 40001(a)]
- b. It is unlawful for an owner to request, cause, or permit the operation of any vehicle that is any of the following [VC 40001(b)]:
  - 1. Not registered or for which any fee has not been paid under this code.
  - 2. Not equipped as required in this code
  - 3. Not in compliance with the size, weight, or load provision of this code.
  - 4. Not in compliance with the regulations promulgated pursuant to this code, or with the applicable city or county ordinances adopted pursuant to this code.
  - 5. Not in compliance with the regulations promulgated pursuant to this code, or with applicable city or county ordinances adopted pursuant to this code.
- c. Whenever a violation is chargeable to the owner or lessee of a vehicle, the driver shall not be arrested or cited for the violation unless the vehicle is registered out of California, or unless the violation is clearly within the responsibility of the driver. [VC 400001(e)]

**5 Uniform Bail Schedule**

- a. Rule 4.102. Uniform bail and penalty schedules-traffic, boating, fish and game, forestry, public utilities, parks and recreation, business licensing.
- b.
- c. The Judicial Council of California has established the policy of promulgating uniform bail and penalty schedules for certain offenses in order to achieve a standard of uniformity in the handling of these offenses. (Refer to appendix at the end of this manual)







\*Plea Bargains can occur anytime in the proceeding. Once a bargain is struck, the case proceeds to a Sentencing Hearing.

**A. COURTESY NOTICE**

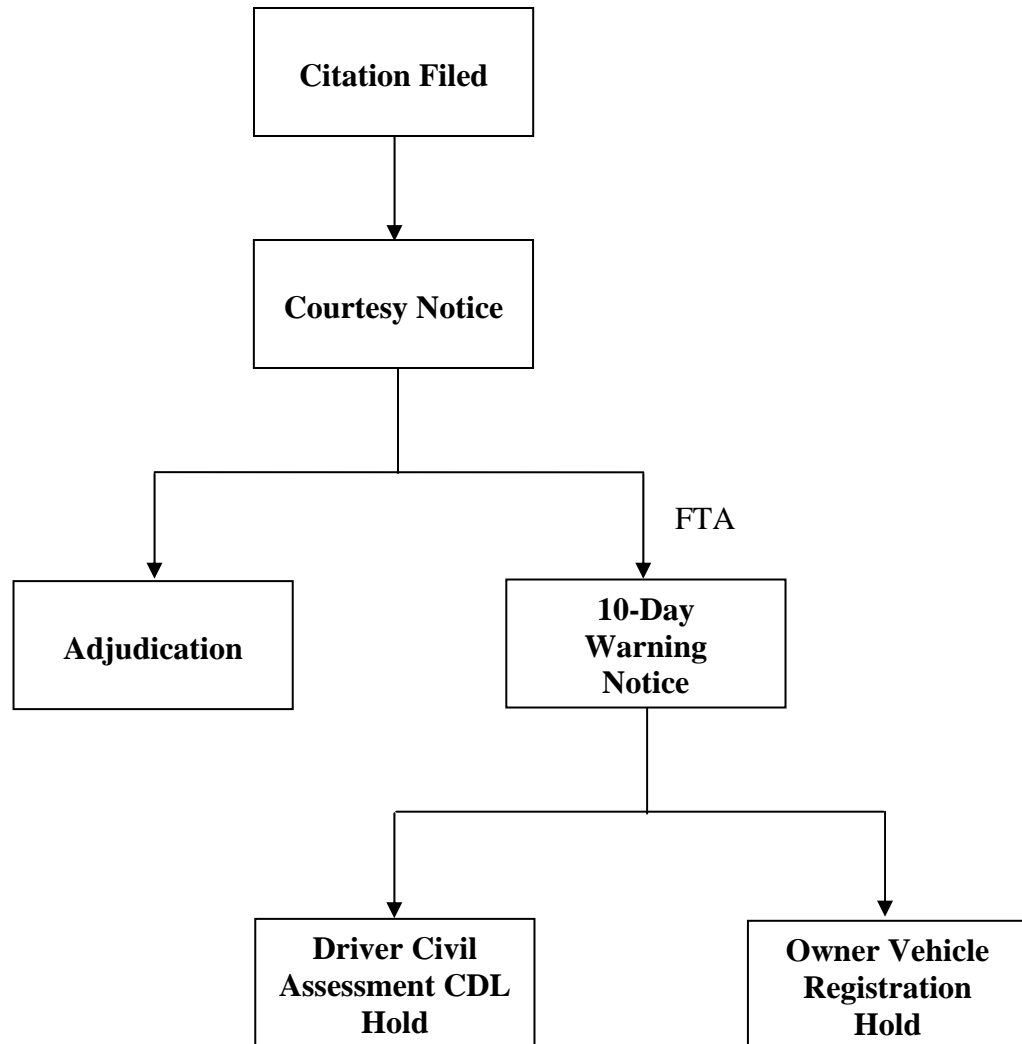
1. The court will send a courtesy notice, which will contain information relating to the citation issued. Information will include but not be limited to:
  - a) Citation Number
  - b) Vehicle License Number
  - c) Defendant's personal information (Name, DOB)
  - d) Payment Options
  - e) Court Hearing Information
  - f) Due Date
  
2. Payment Options
  - a) Bail Forfeiture - If the person chooses to pay the bail on the citation without going to trial, the payment will be processed as a bail forfeiture. Bail forfeiture will result in the violation being reported to the Department of Motor Vehicles as a conviction.
  - b) Traffic School – The person may choose to attend Traffic School for certain vehicle violations. An additional fee in the sum of \$29.00, plus the full bail amount is required. Upon completion of school, and upon the court receiving proof of such completion the case will be dismissed.
  - c) Community Service: If the person is unable to pay the bail, the person may elect to complete community service in lieu of the fine.
  - d) Payment Arrangements-If the person is unable to pay the full amount of the bail, the person may set up payment arrangements.

- e) Correspondence-Pursuant to local court rules/procedures the court may accept ex parte communication relating to extenuating circumstances, plea by mail, etc. (Example: Military service, hospitalization, and other hardships)

**B. FAILURE TO APPEAR**

- 1) Any person willfully violating his or her written promise to appear or a lawfully granted continuance of his or her promise to appear in court is guilty of a misdemeanor regardless of the disposition of the charge upon which he or she was originally arrested. [VC 40508(a)]
- 2) The clerk of the court may give notice of the failure to appear to the Department of Motor Vehicles. [VC 40509.5(a)]
- 3) If the court notifies DMV of the failure to appear (or pay), no arrest warrant shall be issued unless the underlying offense is a misdemeanor or felony, the defendant does not have a valid California Drivers license, or the defendant has unresolved FTA's for one or more other alleged violations of the law. [VC 40509.5(e)]
- 4) In addition to any other penalty, the court may impose a civil assessment of up to \$250.00 against any defendant who fails to appear. If a civil assessment is imposed, no bench warrant shall be issued. This assessment shall be subject to due process requirements governing defense and collection of civil money judgments generally. (PC 1214.1).
  - a. The assessment shall not become effective until at least 10 calendar days after the court mails a warning notice to the defendants.
  - b. If the defendant pays the bail within the time specified on the warning notice, the court will vacate the assessment.
- 5) In Addition, an assessment of \$10 for all defendants whose driver's license or automobile registration is attached or restricted pursuant to section 40509 or 40509.5, to cover the cost of notifying the Department of Motor Vehicles of the attachment or restriction.

## **Citation Process**



**C. CUSTODY STATUS**

**1. Custody Options**

**a. At Liberty**

- 1) Own Recognizance (O.R.) (PC 1318)
- 2) Bail (include amount and type)
- 3) On Probation
- 4) Outpatient (PC1600-1620)
- 5) Deferred Entry of Judgment (Diversion)

**b. In Custody**

- 1) Bail set at a certain amount
- 2) No bail set

**2. Other Custody Items**

**a. Remanded**

The defendant is returned to the care and custody of the Sheriff/Marshal or designated law enforcement officer in the following situations:

- 1) At the end of each hearing if in custody
- 2) At any hearing if the defendant is "at liberty" and one of the following things occur:
  - a) Bail is increased
  - b) There has been a violation of one or more conditions of the O.R. release
  - c) Bail is exonerated

**b. Release Orders**

- 1) The Court may order the defendant released from custody and placed on an "at liberty" status at any stage of the proceedings.
- 2) If the defendant is acquitted or the case is dismissed, the Court shall order the defendant released.

**D. BAIL (PC 1268-1320)**

**1. Definition**

A security given by or for a person in custody to ensure his/her appearance in court when so ordered.

**2. Fixing the Amount**

- a. PC 1269b(b) prescribes that bail will be fixed (set) on the following documents for use in the following instances:
  - 1) Schedule of bail (PC 1269(c))
  - 2) Court's order admitting to bail
  - 3) Warrant of arrest
  - 4) Setting, Reducing, or Denying Bail (PC 1275)
- b. Main factors considered by Court (PC 1275)
  - 1) Protection of the public
  - 2) Seriousness of offense charged
    - i) alleged injury to the victim
    - ii) alleged threats to victim(s) or any witness(es)
    - iii) alleged use of a firearm or deadly weapon
    - iv) alleged use or possession of a controlled substance by the defendant
    - v) For HS 11350 violations, Court must consider the amount of controlled substance involved in the commission of the crime
    - vi) whether the defendant is currently on bail for an alleged violation of HS 11350
  - 3) Defendant's previous criminal history
  - 4) Flight risk of defendant

- c. Bail Set Below Bail Schedule on Serious/Violent Felony (PC 1275(c))
  - 1) Court shall make a finding of unusual circumstances
  - 2) Finding must be set on the record
  - 3) “Unusual circumstances” does not include the following:
    - a. defendant made all prior court appearances
    - b. no new offenses

**3. Feloniously Obtained Bail (PC 1275.1)**

- a. Bail thought to be feloniously obtained cannot be accepted until the court has made a finding the funds used to meet bail have not been feloniously obtained.
- b. A Bail hold pursuant to 1275.1 PC can be ordered based on one of the following:
  - 1) Peace officer submits declaration of probable cause executed under penalty of perjury.
  - 2) Prosecuting attorney submits declaration of probable cause executed under penalty of perjury.
  - 3) Court has probable cause to believe funds to be used for bail were feloniously obtained.
- c. Court finds probable cause exists:
  - 1) Defendant and his counsel are entitled to a copy of the probable cause declaration.
  - 2) Defendant has burden of proof to show by preponderance of the evidence that the funds to be used for bail have not been feloniously obtained.
  - 3) Probable cause hearing may be closed.
    - a) may be made by party providing any Request portion of the bail funds.
    - b) Request is made to allow privacy of financial assets of the party.

- 4) If the defendant meets the burden of proof:
  - a) Bail hold will be released.
  - b) Defendant may be released under authority of the amount of the bail.
  - c) Court shall vacate hold order on condition the consideration used for the bail bond be approved by the Court.
- d. Probable cause declaration must be acted on within 24 hours or defendant must be released on posting the amount of bail set.
- e. Defendant can get a loan to obtain funds for bail provided the money used to repay the loan are not feloniously obtained.
- f. If the Defendant is found to have willfully misled the court regarding the source of the bail:
  - 1) Court can increase the bail.
  - 2) This fact can be considered at future bail hearings for this defendant.

**4. Types of Bail**

- a. Cash Bail (PC 1295) - full amount of bail set is posted
- b. Bail Bond/Undertaking (PC 1276)
  - 1) A guarantee by a corporate surety that a person will appear in court.
  - 2) A promise to pay a sum of money if the appearance is not made.
- c. Property Bond (PC 1298)
  - 1) Equity in real property, given as security to guarantee that a person will appear in court.
  - 2) The equity of property, less encumbrances, must be equal to twice the amount of bail.



- d. Appeal Bond (PC 1272)
  - 1) The Court may set bail on appeal if there exists clear and convincing evidence that the defendant is not likely to flee.
  - 2) It is discretionary as to felonies requiring notice to the prosecuting attorney at least five court days before the hearing (PC 1274).

**5. Bail Exoneration (PC 1195)**

- a. The removal of responsibility from the depositor to guarantee the defendant's appearance.
- b. When exoneration occurs...
  - 1) O.R. release granted (PC 1304)
  - 2) Good cause surrender by depositor (PC 1300)
    - i. May be made with a certified copy of the undertaking of the bail.
    - ii. May be made with certified copy of the certificate of deposit used as bail.
    - iii. May be made with an affidavit by bail agent/surety containing all the information that would have been contained in the certified copy of the undertaking. Defendant's motion to reduce bail granted.
  - 3) Case dismissal/acquittal (PC 1303)
  - 4) Judgment is pronounced (PC 1195)

**6. Bail Forfeiture (PC 1305)**

- a. The loss of money or property due to breach of a legal obligation.
- b. The Court shall **in open court** declare forfeited the undertaking of bail or the money or property deposited as bail if the defendant fails to appear when his/her presence has been lawfully required. (PC 1305(a))
- c. The clerk shall require the appropriate agency to enter each bench warrant issued on a private surety-bonded felony case into the National Crime Information Center (N.C.I.C.). (PC 980 & PC 1196)

**Court Clerk Training Institute 2005**  
*Traffic Courtroom and Office Procedures*

---

II. Defendant Status

- d. If the agency fails to enter the bench warrant into NCIC and the court finds that this failure prevented the bondsman from arresting/detaining the defendant, the forfeiture shall be set aside and the bond exonerated.
- e. Surety or depositor shall be released of all obligations under the bond if any of the following conditions apply:
  - 1) The clerk fails to mail the notice of forfeiture within 30 days after the entry of the forfeiture. (PC 1305(b)(1))
  - 2) The clerk fails to mail the notice of forfeiture to the surety at the address printed on the bond. (PC 1305(b)(2))
  - 3) The clerk fails to mail a copy of the notice of forfeiture to the bail agent at the address shown on bond. (PC 1305(b)(3))

**Note:** The 180-day period of forfeiture is extended 5 days to allow for mailing.

- f. If the defendant appears (voluntarily or in custody) within 180 days of the date of forfeiture or within 180 days of the date of mailing of the notice of forfeiture, the court shall vacate the order of forfeiture and exonerate the bond. (PC 1305(c)(1))
  - 1) Includes times where the defendant may be released from custody prior to court appearance.
  - 2) Includes arrests made outside of the county.
- g. In lieu of exonerating the bond, the court may order the bond reinstated and the defendant released on the same bond if both of the following conditions are met under PC 1305(c)(4)(A) & (B):
  - 1) The bail agent is given notice and does not object.
  - 2) The bail agent has not surrendered the defendant.

A re-assumption notice may be required by the court.

- h. If the court has reason to believe that sufficient excuse may exist for the defendant's failure to appear, the court continues the case for a period it deems reasonable to enable the defendant to appear without ordering a forfeiture of bail or issuing a bench warrant. (PC 1305.1)  
The court then makes a finding that good cause has been found not to forfeit bail.
- i. If, after the court has made the order, the defendant without sufficient excuse, fails to appear on or before the continuance date set by the court, that bail shall be forfeited and a warrant for the defendant's arrest may be ordered issued. (PC 1305.1)

II. Defendant Status

- j. The surety agent (or depositor) has 180 days to produce the defendant to the court. At the expiration of the 180-day period, if the defendant has not been surrendered or arrested, a summary judgment shall issue and the bail agent is responsible for paying the entire amount of the bond to the court. (PC 1306(a))
  - 1) The bail agent may file a motion to extend the 180-day period (toll time) if he/she feels that an additional amount of time will be needed to secure the arrest of the defendant.
  - 2) The court, after hearing said motion, may extend the time for an additional 180-day period. (PC 1305.4)
  - 3) Summary judgment must be entered by the court within 90 days of the expiration of the 180-day forfeiture period, or the bond is exonerated. (PC 1306(c))

**7. Own Recognizance Release (PC 1270)**

- a. A defendant is allowed to remain at liberty during pendency of a criminal action or proceeding. The release is based on a written agreement and promise to appear that is signed by the defendant.
- b. Criteria for Release
  - 1) Type of offense
  - 2) Criminal record
  - 3) Ties to the community
  - 4) Employment record
- c. Grounds for Revocation by the Court
  - 1) Failure to appear
  - 2) Violation of O.R. release agreement
  - 3) Arrested on a new case
  - 4) Nature of charges are changed

## **BAIL ACTION CHECKLIST**

Y      Was bail ordered?

- ☐ No bail set
- ☐ \$ amount
- ☐ PC 1275.1 Hold

Y      Was bail posted?

- ☐ What type of bail?
- ☐ How much?
- ☐ Who posted?
- ☐ How will you reach them?

Y      Was bail exonerated?

- ☐ How are the parties notified?
- ☐ What other documents/notices need to be done?

Y      Was bail ordered forfeited?

- ☐ How are the parties notified?
- ☐ What other documents/notices need to be done?
- ☐ Who needs to be noticed?
- ☐ When is notice sent?
- ☐ Was the 180-day period tolled?
- ☐ What is sent when summary judgment is signed?
- ☐ Who sends the summary judgment notice?
- ☐ What happens when the forfeiture is vacated?
- ☐ What happens when bail is re-assumed?

**E. WARRANTS**

**1. Arrest Warrants**

**a. Definition**

An arrest warrant is a written order which is made on behalf of the state and is based upon a complaint issued pursuant to statute and/or court rule and which commands law enforcement officer to arrest a person and bring him before a magistrate. (*Black's Law Dictionary*)

**b. When Issued (PC 813(a))**

- 1) Complaint is filed charging a public offense.
- 2) Magistrate is satisfied reasonable grounds exist to believe defendant may have committed the crime.

**c. Form of Arrest Warrant (PC 814)**

- 1) Code provides basic language for the arrest warrant.
- 2) Form may include defendant's identification information to facilitate service of warrant.

**d. Contents (PC 815)**

- 1) Name of defendant, or if unknown, defendant may be designated by any name,
- 2) Date of issuance,
- 3) City/county where issued,
- 4) Signature of magistrate, judge, justice or other issuing authority with the title of his office, and
- 5) The name of the court or issuing agency.

**e. Amount of Bail (PC 815a)**

- 1) Magistrate must fix bail at time of issuance of warrant.
- 2) Bail must be reasonable and sufficient for the appearance of the defendant after arrest.
- 3) Warrant must contain a signed statement from the issuing magistrate stating the amount of bail. Statement may be in words to the effect of "The defendant is to be admitted to bail in the sum of \_\_\_\_\_ dollars."

**f. Time of Service (PC 840)**

- 1) Arrest for a felony may be made at any time of day or night.
- 2) Arrest for misdemeanor or infraction cannot be made during hours of 10:00 p.m. to 6:00 a.m. unless:
  - a) Arrest is made without a warrant per PC 836 or 837.
  - b) Arrest is made in a public place.
  - c) Arrest is made when person is in custody pursuant to another lawful arrest.
  - d) Arrest is made pursuant to a warrant which, for good cause shown, directs that it may be served at any time of the day or night.

**2. Bench Warrants**

**a. Definition**

Process issued by the court itself, or “from the bench”, for the attachment or arrest of a person; either in case of contempt, or where an indictment has been found, or to bring in a witness who does not obey the subpoena. (Black’s Law Dictionary).

**b. When issued [PC 978.5(a)]**

- 1) Defendant fails to appear as required by law:
  - a) Ordered by court to personally appear at specific date and time;
  - b) Released on bail and ordered by court or person authorized to accept bail or personally appear at specific date and time;
  - c) Released from custody on own recognizance and promises to personally appear at specific date and time;
  - d) Released from custody by citation and signed a promise to appear at a specific date and time;
  - e) Authorized to appear by counsel and ordered to appear at specific date and time;
  - f) Ordered to appear at a specific date and time after information or indictment has been filed.
- 2) Defendant was discharged on bail and failed to appear (PC 979).

**c. Form of Bench Warrant (PC 981)**

- 1) Code provides basic language for bench warrant.
- 2) Form may include defendant's identification information to facilitate service of warrant.

**d. Amount of Bail (PC 982)**

- 1) Standard Bail Schedule (PC 1269b(b))
- 2) Bench warrant must contain an endorsement signed by the clerk to the following effect: "The defendant is to be admitted to bail in the sum of \_\_\_\_\_ dollars."
- 3) Criteria considered when setting bail (PC 1275(a))
  - 1) Seriousness of offense.
  - 2) Protection of the public.
  - 3) Defendant's prior criminal history.
  - 4) Ties to the community.
  - 5) Funds not feloniously obtained.
  - 6) Alleged injury to the victim.
  - 7) Alleged threats to the victim or witness.
  - 8) Alleged use of a firearm or other deadly weapon.
  - 9) Alleged use or possession of controlled substances.
- 4) Hold (PC 1275.1)

District Attorney may place a PC 1275.1 hold on the defendant to preclude the defendant from posting bail. A hearing will be held to determine the origin of bail funds.

**e. Bench Warrant Issued and Held**

- 1) Bench warrant is not physically prepared but “stayed” to a specific date.
- 2) Forfeiture of bail still goes forward unless it is deferred (PC 1305.1) for specific reasons stated on the record. The court states a finding of good cause not to forfeit bail.
- 3) When defendant appears, the bench warrant is quashed or withdrawn.
- 4) When bench warrant is to be prepared for service, it is released.

**f. Bench Warrant Issued Forthwith**

- 1) Clerk must note order in minutes.
- 2) Issuing clerk will start procedure to issue warrant.

**g. Recall of Warrant**

- 1) Definition: to take back, cancel, revoke.
- 2) Recall occurs when:
  - a) Bench warrant was served (defendant arrested).
  - b) Defendant surrendered (walked into court on his/her own).
- 3) The order to recall a bench warrant must be clearly documented in the minutes.

**3. Attachment of Defaulters — Civil Bench Warrants**

- a. Definition: An order issued for the arrest of an individual, but not then defendant (a witness, attorney, custodian of records ...)
- b. Counsel requesting warrant should provide a description of the subject.
- c. At the conclusion of the trial or hearing, the clerk should bring the outstanding attachment to the attention of the court to determine if it should remain active. It is not automatically recalled as the court may wish to take action against the person if and when they are located.



**A. MINUTE ORDERS**

**1. Definition and Statute Requirements**

- a. Minute order - a memorandum of what takes place in court, made by authority of the court. (*Black's Law Dictionary*)
- b. Minutes are to be maintained by the clerk as part of the permanent record of the court. (GC 69844)
- c. Minutes constitute the only official record of the actions of the court. (*Meskill v. Culver City Unified School District* (1970) 12 Cal.App.3rd 815, 821)

**2. Minute Order Form (CRC 201)**

- d. Paper
  - 1) Recycled, white or unbleached (CRC 201(b))
  - 2) 8 ½ x 11 inches in size (CRC 201(c))
- e. Print (CRC 201(c))
  - 1) Not smaller than 12 points
  - 2) Blue-black or black color ink
  - 3) Equivalent to Courier, Times or Helvetica
- f. Pages must be (CRC 201(c))
  - 1) Punched with two holes (2 ½ inches apart) in the center of the page, 5/8 inches from the top
  - 2) Numbered consecutively at the bottom. If minute orders are produced electronically, they may not be numbered at the bottom of the page.

**3. Preparation**

- a. Should be prepared within the time parameters established by statute and the court.
- b. Should be composed using correct grammar and composition, written English [CCP 185(A)] acceptable abbreviations (CCP 186).
- c. Should contain accurate spelling and punctuation.
- d. Should maintain a consistent format.
- e. Should use concise wording.
- f. Should be neatly typed or handwritten per court policy.

**4. Components**

a. Heading

- 1) Current date
- 2) Court Name
- 3) Department number
- 4) Names of court staff members
  - a. Judge
  - b. Court Clerk
  - c. Court Reporter
  - d. Bailiff
- 5) Case Information
  - a. Case number
  - b. DA number (if assigned and dictated by court policy)
  - c. True name of defendant
  - d. Violations/Charges, if required
- 6) Nature of proceedings (arraignment, jury trial, etc.)
  - a. Day of day
  - b. Beginning and ending custody status

b. Body of Minute Order

- 1) Appearances
- 2) Summary of Events that Occurred
- 3) Closing Events

**5. The Particulars**

a. Appearances

1) Appearances of Parties

- a. Prosecuting party (PC 684)
- b. Defendant (PC 685)

2) Name of counsel and agency/law firm

3) Defendant(s)

- a. appearing pro per
- b. appearing with counsel
- c. appearing by counsel

4) Probation Officer

5) Interpreters, if used

- a. Include name of interpreter(s) and whether they are certified or not (CRC 984.2)
- b. Foreign language being translated [185(a) CCP]
- c. Name of person needing the interpreter (defendant, witness, etc.)

b. Summary of Events that Occurred

- 1) Entry of Plea (PC 1017)
- 2) Admission/Denial of Priors (PC 1025)
- 3) Motions
  - a. Moving Party
  - b. Ruling
  - c. Grounds, if any
- 4) Advisement of Constitutional Rights

- 5) Stipulations
  - a. “Parties stipulate that the defendant drives a blue Toyota truck.”
  - b. “Parties stipulate that on June 14, 1996, rain fell between 4:00 p.m. and 6:00 p.m.”
- 6) Waivers
- 7) Jury Information
  - a. Panel(s) present for jury selection
  - b. Jurors sworn re:
    - i. Qualifications [CCP 232(a)]
    - ii. To try the case [CCP 232(b)]
  - c. Jury’s presence/absence during the proceedings
  - d. Jury deliberations
  - e. Jury discharged at conclusion of case
  - f. Absence of any of the jurors for any reason
  - g. Seating an alternate juror
- 8) Admonishments to the jury
- 9) Witnesses sworn and testified
  - a. State full name of witness. When titles are used include first name.
  - b. Include on whose behalf the witness was called.

- 10) Evidence identified and received
  - a. Specify the offering party.
  - b. List the identifying number/letter.
  - c. Give a brief description of the item:
    - i) "A color photograph of a blue Toyota truck."
    - ii) "A copy of a letter dated June 14, 1996."
  - d. Indicate the exhibit's status:
    - i) Marked for identification purposes.
    - ii) Received into evidence.
    - iii) By reference (indicate where).
- 11) Disposition of verdict/court's finding (PC 1164)
  - a. Guilty
  - b. Not guilty
- 12) Referrals
  - a. To whom
  - b. For what purpose
  - c. When report is to be submitted to the court

c. Closing Events

- 1) Adjournment of the day's proceedings
- 2) Future hearing dates (date, time, dept./div.)
- 3) Defendant's Status
  - a. In custody; sheriff ordered to return defendant to court.
  - b. At liberty; defendant ordered to return  
(OR/Bail/Probation)

**6. Recording Time**

- a. Time should be noted (not mandatory):
  - 1) When court convenes each day
  - 2) When court declares all recesses
  - 3) When events affect the jury:
    - a. Jury assembles in courtroom at a time different from the                day's proceedings
    - b. Jury commences deliberations
    - c. Jury deliberations:
      - i) Jury assembles each day
      - ii) Jury recesses for breaks/lunch
      - iii) Jury returns to courtroom for whatever reason (questions, further instructions).
      - iv) Jury adjourns each day
      - v) Jury returns with a verdict
  - 4) When court adjourns at the end of the day.
- b. Time may be noted:
  - 1) When the jury panel is sworn
    - a) Before commencement of voir dire
    - b) To try the case.
  - 2) When the bailiff is sworn to take charge of the jury before deliberations commence.

(Start and stop time of certain events may not be required in all courts.)

**A. ARRAIGNMENT**

**1. Definition (PC 988)**

- a. The proceedings in which an accused person is brought before a judge to hear the charges filed against him or her and to enter a plea.
- b. The first criminal hearing in general jurisdiction court.

**2. Elements**

- a. Determining defendant's true name and date of birth if the defendant appears to have been a minor at the time the offense was committed
- b. Appointment/re-appointment of counsel (PC 987.2)
- c. Reading of the accusatory pleading (or waiver of reading)
- d. Delivering a true copy of the accusatory pleading to the defendant
- e. Advising defendant of constitutional rights
- f. Asking defendant to enter a plea or having counsel enter not guilty plea on his/her behalf (PC 1017)

**3. Six Possible Pleas (PC 1016)**

**a. Guilty**

- 1) Definition - A formal admission in court as to guilt which a defendant may make if he or she does so intelligently and voluntarily. *Black's Law Dictionary, 5<sup>th</sup> Edition.*
- 2) Effect - No trial on the issue of guilt is necessary. A trial on the issue of penalty may be held on cases in which special circumstances are alleged.

**b. Not Guilty**

- 1) Definition - A plea entered by the accused to a criminal charge. *Black's Law Dictionary, 5<sup>th</sup> Edition.*
- 2) Effect - Since the defendant has denied the charges, the case will be set for trial to determine the defendant's innocence or guilt.

**c. Nolo Contendere**

- 1) Definition - “I will not contest it.” A plea in criminal court which has a similar legal effect as pleading guilty. The defendant does not admit or deny the charges, though a fine or sentence may be imposed. Black’s Law Dictionary, 5th Edition
- 2) Effect - A nolo plea cannot be used against the defendant in a civil action based upon the same acts. This plea is subject to the approval of the court. After the court approves the plea, the court will find the defendant guilty.
- 3) A nolo plea cannot be entered with respect to cases processed through Deferred Entry of Judgment [PC 1000.1(3)]

**d. Former Judgment of Conviction or Acquittal (Double Jeopardy)**

- 1) Definition - A person cannot be tried for the offense more than once; this is fundamental common law and constitutional right of the defendant affording protection against his being again tried for the same offenses. Black’s Law Dictionary, 5th Edition.
- 2) Effect - The Court must hold a hearing to determine the validity of the claim. The issue is “Is the prior conviction or acquittal true?” If yes, the prosecuting attorney may move to dismiss the case or the Court must dismiss the case. If the issue is not true, the defendant must enter a new plea.

**e. Once in Jeopardy**

- 1) Definition - A phrase used to express the condition of a person charged with a crime who has once already, by legal proceedings, been put in danger of conviction and punishment for the same offense.
- 2) Effect - The Court must hold a hearing to determine the validity of the claim. The issue is “Was the defendant previously in jeopardy for this same offense?” If yes, the prosecuting attorney may move to dismiss the case or the Court must dismiss the case. If the issue is not true, the defendant must enter a new plea.



**f. Not Guilty by Reason of Insanity (PC 1026)**

- 1) Definition - A plea entered by the accused denying he committed the alleged charges since he was insane at the time the crime was committed.
- 2) Effect - Case proceeds on the not guilty plea and on the presumption that no other plea (reason of insanity) was entered. If the defendant is found guilty, then the case proceeds on the issue of the sanity of the defendant at the time the crime was committed.

**4. Mutual Discovery Orders (PC 1054 et. Seq.)**

- a. Counsel are mandated by statute to conduct timely pretrial discovery.
- b. Purpose of the statute is to limit the need for judicial enforcement of discovery rules.

**5. Setting Future Dates (CRC 227.4)**

- a. A motion hearing date or due date for all pretrial motions
- b. A readiness conference date, within 1-14 days before trial
- c. A trial date, within 45 days of arraignment, or within 30 days of arraignment if the defendant is in custody at the time [PC 1382(a)(3)].
  - 1) Defendant may waive the 30/45-day trial requirement
  - 2) Defendant may request or consent to a trial date set beyond the 30/45-day limit, without a waiver. If this occurs, the defendant will be brought to trial on the date set or within 10 days thereafter.
  - 3) Time waivers **must** be placed in the minutes.
  - 4) When the court finds good cause to set beyond the 30/45 day limit without a time waiver, the reason must be stated in the minutes.

NOTE: CCP12 – Computation of time . The time in which any act provided by law is to be done is computed by the excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded.

**6. Traffic Arraignments**

- a. Video arraignment – some traffic court judges and commissioners have prepared a video tape which is played in the courtroom at the beginning of the calendar before the judge or commissioner takes the bench. The video will give an overview of procedural rights, plea options, range of sentences, consequences of a particular plea, traffic violation points that may be assessed by DMV, explanation of traffic violator school, and payment arrangements for fines.
- b. Printed advisement – some judicial officers give the defendants a printed advisement in place of or in addition to an oral advisement of the rights.
- c. Defendants will sometimes plead guilty with an explanation. Such a plea has the same effect as a guilty plea. Defendants enter this plea hoping to receive a reduced or suspended sentence.

**7. Written Plea of Not Guilty for Infractions [VC 40519(b)]**

- a. Defendant required to deposit full bail
- b. Bail shall be used to guarantee appearance and to apply toward payment of any fine in the event of conviction.
- c. The case shall be set for arraignment and trial on the same date, unless the defendant requests a separate arraignment.
- d. Any person using this procedure shall be deemed to have waived the right to be tried within the statutory time.
- e. Thereafter, the case shall be conducted as if the defendant had appeared in person.
- f. The clerk of the court shall notify the accused of the time and place of trial by mail at least 10 days prior to the time set for trial.

**REVIEW CHART FOR ARRAIGNMENTS**

- ▶ Defendant is served with copy of Complaint
- ▶ Defendant's true name is determined
- ▶ Counsel is appointed if defendant is not represented
- ▶ Defendant acknowledges receipt of Complaint/Information/Indictment
- ▶ Defendant waives reading of Complaint/Information/Indictment and advisement of rights
- ▶ Defendant is arraigned
- ▶ Defendant enters a plea
- ▶ Motion to continue filed for purpose of filing a demurrer
- ▶ Case assigned to a department for all purposes OR Court assigns dates for trial, readiness conference, and last day to file motions
- ▶ Waiver of time if trial is set beyond 30 days if defendant is in custody or 45 days if out of custody
- ▶ Defendant remanded or ordered to return

**OR**

- ▶ Bench Warrant is issued for defendant's failure to appear at arraignment

**B. PRE-TRIAL MOTIONS**

1. Benefits to Parties and the Court
  - a. Motion can dispose of the case entirely. No need for trial.
  - b. Ruling may cause a change of plea. No need for trial.
  - c. Issues are clarified and points of common ground are found. Trial will take less time.
  - d. Discovery compliance.
2. Time for Filing
  - a. Pretrial motions shall be served and filed 10 days prior to hearing date. (CRC 227.5)
  - b. All opposing papers must be filed at least 5 days before the hearing.
  - c. All reply papers must be filed at least 2 court days before hearing.
  - d. Exceptions:
    - 1) Motions to continue criminal hearings require notice 2 court days in advance. (PC 1050)
    - 2) Motions for Discovery (Pitchess Motions) require 21 days notice pursuant to CCP 1005.
    - 3) Motions to Suppress Evidence (PC 1538.5) require service on the district attorney at least 10 judicial days prior to the hearing.
  - e. Counsel requesting to file motions with less than 10 days notice must obtain an Order Shortening Time signed by the judge.
  - f. Motions filed in the limited jurisdiction courts will follow local court rules for filing deadlines.

**Court Clerk Training Institute 2005**  
*Traffic Courtroom and Office Procedures*

---

IV. Arraignment, Plea, and Sentencing

3. Motion Hearings

- a. Moving party has the burden of proof.
- b. Motions may be heard one of two ways:
  - 1) Orally by the court (counsel present oral arguments)
  - 2) Submitted on the written documents (or transcripts) already filed.

4. Ex-Parte Motions

- a. Definition: Submitted by one side without notice to the opposing party.
- b. For appointment of Investigator
- c. For appointment of Medical/Psychological Evaluations
- d. For appointment of Experts
- e. For additional funds to assist in the defense
- f. Capital case request for funds (PC 987.9)
  - 1) Capital case defendants may ask for funds to pay for investigators, experts, and others for the preparation and presentation of their defense under PC 987.9.
  - 2) Request for funds is made by affidavit.
  - 3) Existence and contents of affidavit are confidential.
  - 4) Affidavit will be reviewed at an in camera hearing.
  - 5) Order on funds disbursed by the court are confidential.
  - 6) Follow local court policy for placement of affidavits, supporting documents, minutes, and signed orders for funds under PC 987.9.

**Court Clerk Training Institute 2005**  
*Traffic Courtroom and Office Procedures*

---

IV. Arraignment, Plea, and Sentencing

5. Minute Order Contents
  - a. Nature of the proceedings
  - b. Parties present, include first and last name
  - c. Testimony given
  - d. Exhibits introduced/received
  - e. Rulings of the court
    - 1) May be granted or denied
    - 2) May be ruled on its entirety or in part
    - 3) May be taken under submission
  - f. Disposition of the case
    - 1) Charges dismissed; defendant discharged as to this case only  
(don't forget to vacate any future hearing dates or to exonerate any bail!)
    - 2) Pre-trial or trial date to remain

<p><b>Tip:</b> Make a copy of the face page of all written motions. Use the copy to keep track of matters before the bench.</p>
---

**Court Clerk Training Institute 2005**  
*Traffic Courtroom and Office Procedures*

---

IV. Arraignment, Plea, and Sentencing

**6.** Pretrial Motion List

- a. PC 1538.5 Motion: A defense motion for return of property or suppression of evidence.
- b. PC 954 Motion: A motion to consolidate (to bring together) two or more different cases or offenses.
- c. Discovery Motion: A motion to have the Court order the production of information, documents, or evidence that has not yet been provided to the opposing side, such as laboratory test results or a list of possible witnesses.
- d. Change of Venue Motion (PC 1033): A motion to move the trial to another venue (county) based on pretrial publicity.
- e. Motion to Sever: A motion to separate / bifurcate. The moving party requests that counts, cases, priors, and/or co-defendants be heard separately.
- f. PC 1050 Motion: A motion to continue any hearing in a criminal proceeding, including the trial. A written notice shall be filed and served on all parties to the proceeding at least two (2) court days before the hearing sought to be continued, together with affidavits or declarations detailing specific facts showing that a continuance is necessary. [PC 1050(b)(1)] Continuances shall be granted only upon a showing of good cause. At the conclusion of the motion for continuance, the court shall make a finding whether good cause has been shown and, if it finds that there is good case, shall state on the record the facts proved that justify its finding. A statement of facts proved shall be entered in the minutes. [PC 1050(e) and (f)].
- g. CCP 170.6 Motion to Disqualify: Peremptory challenge of a judge, court commissioner, or referee by either the prosecutor or defense.

**7. Common Motions**

1.

- a. **Marsden Motion Hearing** - Request by defendant to have court appointed counsel relieved.

- 1) Closed Hearing
- 2) Minutes only reflect the granting or denial of the motion, not the content.
- 3) Court reporter's notes are sealed after hearing (if court reporter present).

1.

- b. **PC 1368 Motion Hearing** - Court or defense attorney's inquiry into mental competence of defendant. Defendant unable to:

- 1) Understand the nature of the proceedings
- 2) Assist counsel in a rational manner

**An examination and subsequent hearing to determine mental competency are requested.**

After Mental Competency Hearing:

- a. **Defendant is found to be competent.** Criminal proceedings are reinstated. Defendant returns to stage of the case where criminal proceedings were suspended.
- b. Defendant is found to be incompetent. Criminal proceedings remain suspended. Defendant is committed for treatment.



## **8. Pre-Trial Motions by “Case Law” Names**

Some cases become such landmarks in law that their names are used as a shorthand reference for the central right or concept embodied in the ruling. For example, we all know that the reference to *Miranda* means that the defendant must be advised of certain rights at the time of arrest and before questioning. (*Miranda v. Arizona* 384 U.S. 436). The following motions are listed in alphabetical order by the “case law” names.

### **Aranda Motion** *People v. Aranda* (1965) 63 Cal.2d 518

This motion concerns one defendant making an admission or confession and implicating a co-defendant. The motion will be brought by the co-defendant trying to minimize the damage of the statement. The Court may:

1. Sever the two defendants and have separate trials.
2. Permit a joint trial deleting the reference to the objecting co-defendant.
3. Not allow the statement to be used at all in the joint trial.

### **Buker Motion** *Buker v. Superior Court* (1972) 25 Cal.App.3d 1085

This is a defense motion for the return of money seized from the defendant at time of arrest or during execution of a search warrant.

### **Eleazer Motion** *Eleazer v. Superior Court* (1970) 1 Cal.3d 847

This is a motion to require the prosecution to inform the defense of the whereabouts of a confidential informant (C.I.). The court held that the prosecution must make a good faith effort to keep in touch with or locate the C.I. so that he/she could be served with a subpoena to come to court.

### **Evans Motion** *Evans v. Superior Court* (1974) 11 Cal.3d 617

This is a defense motion to compel a corporeal (body) lineup prior to trial. Since the People have easy access to compelling a lineup, the court determined that the defense should have the same opportunity.

### **Faretta Motion** *Faretta v. California* (1975) 422 U.S. 806

This is a motion by the defendant in which he/she voluntarily and intelligently elects to represent himself/herself. Defendant may complete a questionnaire for defendants

**Court Clerk Training Institute 2005**  
*Traffic Courtroom and Office Procedures*

---

IV. Arraignment, Plea, and Sentencing

wishing to represent themselves if required by the court. This would be filed with the Court and duly noted in the minutes.

**Hitch Motion** People v. Hitch (1974) 12 Cal.3d 641 or:

**Trombetta Motion** People v. Trombetta (1985) 173 Cal.App.3d 1093

This is a defense motion to suppress testimony based on evidence (such as a breath ampuke, sperm sample, officer's notes, etc.) that was lost or destroyed.

**Kelly/Frye Motion** People vs. Kelly 17 Cal.3d 24; Frye v. United States 293 F 1013

Motion or hearing to determine whether a scientific discovery or principle has gained general acceptance in its field. (DNA Testing)

**Kraft Motion** People v. Kraft (1970) 3 Cal.App.3d 890 or:

**Rochin Motion** Rochin v. California (1952) 342 U.S. 165

This is a motion to suppress because of an alleged use of unnecessary force by police officers, such as using a "choke hold" to get heroin out of the mouth or arm twisting to get a blood sample.

**Marsden Motion** People v. Marsden (1970) 2 Cal.3d 118 (not necessarily a pretrial motion)

Request by defendant to have court appointed counsel relieved. This Motion may be made at any stage of the proceedings. Defendant must give reasons as to how and why the attorney's representation is inadequate.

**Murgia Motion** Murgia v. Municipal Court (1975) 15 Cal.3d 286

This is a defense motion for the production of documents that would point to intentional discriminatory enforcement of penal laws. The defendant alleges that he/she is singled out as an individually selected class for special prosecutorial treatment. With such records, for example, the defense may statistically establish that prostitution statutes are enforced against women who engage in prostitution but not against their male clients.

Assuming that the discovery establishes that the prosecution is discriminatory, the defendant would proceed with a second motion to have the charges dismissed. If the Court grants this motion, the effect is to dismiss the case and discharge the defendant, based upon the ruling in Murgia, supra: "If an individual can show that he would not have been prosecuted except for such invidious discrimination against him, a basic

**Court Clerk Training Institute 2005**  
*Traffic Courtroom and Office Procedures*

---

IV. Arraignment, Plea, and Sentencing

constitutional principle has been violated, and such prosecution must collapse under the sands of prejudice.”

**Pitchess Motion** Pitchess v. Superior Court (1974) 11 Cal.3d 531

This is a defense motion to discover anything in the personnel file of an enforcement officer that discloses a propensity for violence, prior use of excessive force, ethnic or racial bias, or habitual lack of credibility on his part. It is most often brought by a defendant who is charged with resisting arrest or assaulting a police officer and who intends to rely on the theory of self-defense or excessive use of force during trial.

Since police personnel records are confidential under PC 832.8, the Court will examine the records in camera. At the hearing, the Court will either find the records (or parts of them) relevant and grant the motion for discovery (thereby ordering the production of records to the defense) or will find the records irrelevant to the pending case and will deny the motion. As personnel records are highly confidential, the clerk must take great care to protect them and see that they are handled as the Court directs.

**Rost (or Speedy Trial) Motion** Rost v. Municipal Court (1960) 184 Cal.App.2d 507

This is a motion to dismiss for lack of a speedy trial because the Court failed to meet the statutory deadlines set in PC 1381, 1381.5, and 1382. These sections refer to when the defendant is already incarcerated on another case or when deadlines are not met on initial trial.

**Serna Motion** Serna v. Superior Court (1985 ) 40 Cal.3d 239

Defense motion to dismiss based upon unexcused failure of police to serve a misdemeanor arrest warrant within one year of filing of the complaint. Establishes presumption that defendant’s right to a speedy trial has been violated.

**Twiggs Motion** Twiggs v. Superior Court (1983) 34 Cal.3d 360

The basis of this motion is that the district attorney is engaged in a “vindictive” prosecution. The ruling on this case arose because, after a mistrial, the district attorney offered a plea bargain, which was refused by the defendant. In return, the district attorney filed several additional charges against the defendant to add to the retrial.

**Court Clerk Training Institute 2005**  
*Traffic Courtroom and Office Procedures*

---

IV. Arraignment, Plea, and Sentencing

This case also held that when a confidential informant is a material witness on the issue of guilt, the People must disclose his whereabouts to the defense or incur a dismissal. (See Eleazer)

**Wade/Gilbert Motion** United States v. Wade (1967) 388 U.S. 218; Gilbert v. State of California (1967) 388 U.S. 263

This is a motion in which the defense seeks to suppress testimony regarding a pretrial identification lineup conducted by the police on the grounds that the lineup procedure was unfairly suggestive.

**9. List of Common Pre-Trial Motions by Category**

**Suppression Motions:**

1. Suppress evidence because of illegal search and seizure (PC 1538.5)
2. Suppress evidence because of evidence lost or destroyed by the prosecution (Hitch motion)
3. Quash subpoena

**Discovery Motions:**

1. General discovery motion
2. Discover information concerning police officer's past misconduct (Pitchess Motion)
3. Discover informant's identity (EC 1042)
4. Discover evidence to support defense of discriminatory enforcement (Murgia motion)
5. Appointment of experts (EC 730-733)
6. Acquire transcript of prior trial or hearing

**Dismissal Motions:**

1. Demurrer
2. Dismiss in the interest of justice [PC 1385]
3. Suppress evidence pursuant to PC 1538.5, (can result in a dismissal)
4. Dismiss based on discriminatory enforcement (Murgia motion)

IV. Arraignment, Plea, and Sentencing

5. Dismiss based on retaliatory prosecution (Twiggs motion)
6. Dismiss based on denial of speedy trial (Serna motion or Rost motion) [PC 1381]
7. Dismiss based on prosecution's failure to maintain contact with witness (Eleazer motion)

**Protective Motions:**

1. Change of Venue [PC 1033]
2. Severance/Joinder
3. Closed courtroom
4. Continuance [PC 1050]

**Miscellaneous Motions:**

1. For interpreter
2. Bail/OR Release
3. Hold opposing or co-counsel in contempt
4. Be relieved as counsel
5. Amend complaint
6. Recuse prosecutor
7. Challenge judge (CCP 170.6)
8. To have court appointed counsel relieved (Marsden motion)
9. For court reporter
10. To determine mental competency (PC 1368)

**C. PRE-TRIAL CONFERENCES**

**1. Benefits**

- a. Conferences can dispose of the case entirely. No need for trial.
- b. Rulings may cause the defendant to change his/her plea. No need for trial.
- c. Issues are clarified and points of common ground are found. Trial will take less time.

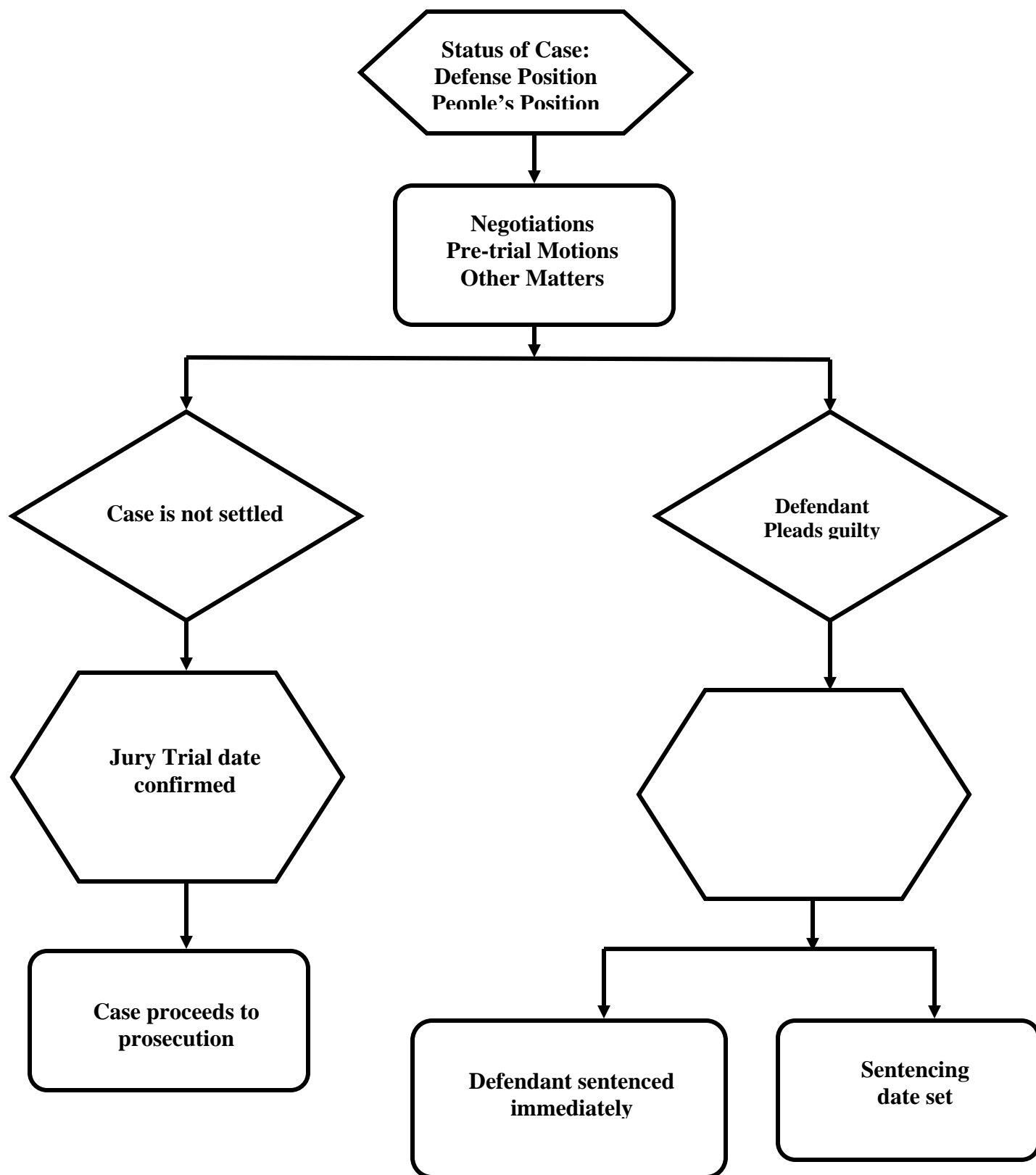
**2. Steps in Negotiation**

- a. Court and counsel confer off the record.
  - 1) Both sides present their perspective of and position on the case.
  - 2) Defense counsel initiates negotiations. Prosecutor may agree or make counter offer.
- b. Court can guide conference and make recommendations to keep negotiations from reaching an impasse.
- c. Defendant makes decision whether to accept or refuse negotiated plea.

**3. Outcome**

- a. Case is non-negotiable.
  - 1) Trial date is confirmed.
  - 2) Case proceeds to prosecution.
- b. An agreement is reached and defendant changes his/her plea.
  - 1) Felony pleas of guilty/no contest are made in open court on the record.
  - 2) Counsel may be present.

**D. READINESS CONFERENCE OVERVIEW**



**E. EVENTS FOR CHANGE OF PLEA**

**1. Court Questions Defendant as to:**

- a. Defendant's true name
- b. Any influence of alcohol/drugs
- c. If defendant has any questions
- d. That defendant has an understanding of relinquished rights (§91.8 Boykin-Tahl). The record must show explicit waivers of these constitutional rights.
  - 1) To trial by jury
  - 2) To confront and cross-examine witnesses
  - 3) To self-incrimination
  - 4) To present a defense, including subpoena power of the court
- e. Addition Inquires for Package Deal (§91.9)
  - 1) Whether the inducement for the plea is proper
  - 2) The factual basis for the guilty plea
  - 3) The nature and degree of coerciveness
  - 4) Whether or not a promise of leniency to a third party was a significant consideration of defendant in choosing to plead guilty
- f. That defendant advised of and understands consequences of plea.
  - 1) Maximum penalties
  - 2) Imposition of restitution fine under PC 1202.4
  - 3) Probation ineligibility
  - 4) Maximum parole period and parole violations



- 5) Revocation or suspension of driving privilege
- 6) Potential effect on immigration status (PC 1016.5)
- 7) Advisement upon DUI conviction - defendant may be charged with murder if future DUI results in death. [VC 23593(a)]
- g. If any promises or threats made regarding entering the plea
- h. If plea was being entered voluntarily
- i. If defendant has an understanding of the impact of probation or the maximum punishment for the crime

## **2. Acceptance of Plea**

- a. Court recites plea bargain.
- b. Court explains the court may consider any dismissed counts when sentencing and in ordering restitution. (Harvey Waiver).
- c. Court reads count(s) to which the defendant will plead.
- d. Defendant must orally enter the same plea. Counsel will state satisfaction with the plea.
- e. Court finds factual basis for the plea.
- f. Defendant must be advised that he/she has the right to be sentenced by the judge taking the plea and if that will not be the case, he/she must waive that right. (Arbuckle Waiver)
- g. Plea is accepted by Court. Prosecutor will move to dismiss any remaining counts and allegations.

## **3. Waive Time for Sentencing**

- a. In minor traffic cases, usually sentence is pronounced immediately following a plea or finding of guilty. Immediate sentencing can be facilitated if the court includes in the arraignment advisement to the defendants an explanation of “waiving time”.
- b. Time for pronouncement of judgment in a misdemeanor or infraction case after a plea or finding of guilt, shall be not less than six hours, nor more than 5 days, unless the defendant waives the postponement. (PC 1449)

**F. SENTENCING**

**1. Infractions**

- a) **Traffic Violator School** – The court may order a continuance of proceedings against a defendant if that person agrees to attend traffic violator school. After attendance, the court may dismiss the charged offense. (VC 41501)

The court may order a defendant who has been convicted of a traffic violation to attend traffic violator school as part of the defendant's sentence. [VC 42005(a)]

In general, a defendant with a valid driver's license may qualify under the following conditions:

- Must not have attended traffic violator school for a previous violation within the last 18 months
- The charge must not carry a traffic violation point count of more than one point or one and one-half points [VC 12810, 12810.5(b)(2)]
- The charge must not be related to alcohol or drug use or possession
- Must not be a violation of VC 22406.5 (tank vehicles)
- Is not a violation on which the defendant failed to appear under VC 40508(a), unless the FTA charge has been adjudicated and any fine imposed has been paid; or
- Is not a violation on which the defendant failed to appear under PC 1214.1, unless the civil monetary assessment has been paid.
- **EFFECTIVE 09/20/2005: A court may not order or permit a commercial driver's license hold to complete TVS in lieu of adjudicating any traffic offense. (AB 3049, VC 1803.5, 41501, 42005)**

The court has the authority to order a defendant to attend traffic violator school instead of adjudicating the traffic offense if the defendant consents. The court may not make such an order, however, if the defendant is charged with a serious traffic violation under VC 15210(i) that occurred in a commercial motor vehicle. [VC 42005(f)]

- b) **Community Service** – The court may order the defendant to either pay a fine or to perform community service work in place of payment of all fines and restitution fines. The court shall specify in its order the amount of the fine and the restitution fine and the number of hours of community service work that shall be performed as an alternative to payment of the fine. (PC 1205.3)
  
- c) **Car Seat/Child Restraint Program** - The court may reduce or waive the fine for a child restraint violation if the defendant establishes economic disadvantage and the court, instead, refers the defendant to a community education program on the dangers of leaving your children unattended in motor vehicles, and provides certification of completion of that program.

**Court Clerk Training Institute 2005**  
*Traffic Courtroom and Office Procedures*

IV. Arraignment, Plea, and Sentencing

**d) Infraction Sentencing Chart**

Veh C §§	Infractions	Penalties
2815, 42001.1	Disregarding traffic signal or direction of crossing guard.	First offense: \$50–\$100 fine. Second offense within 1 year of prior conviction: \$100–\$200 fine. Third or subsequent offense within 2 years of 2 or more prior convictions: \$250–\$500 fine. Court may also order license suspension for up to 30 days.
4000, 42001.8	Driving an unregistered vehicle.	Fine of \$50–\$250.
16020, 16025	Failing to exchange information with other driver involved in accident, including evidence of insurance.	Fine of up to \$250. <a href="#">Veh C §16025(b)</a> . DMV must suspend driver's license for 1 year unless driver establishes financial responsibility. <a href="#">Veh C §16070</a> . On driver's application, DMV may restrict rather than suspend license. <a href="#">Veh C §16072</a> .
16028, 16029	Failing to provide proof of insurance on request of officer or traffic collision investigator during a traffic stop.	First offense: \$100–\$200 fine, plus penalty assessments. Subsequent offense within 3 years of prior conviction: \$200–500 fine, plus penalty assessments. Court has discretion to impound vehicle for good cause.
21367, 40000.14	Failing to obey instructions of person controlling and directing traffic at highway construction site, or to comply with directions of control devices provided to regulate traffic.	A willful violation is a misdemeanor. If committed with wanton disregard for safety of persons, violation is punishable by imprisonment in county jail for up to one year. Additional penalties are set forth in <a href="#">Veh C §42009</a> .
21453(a), (c), 21454(c), 21457(a), 42001.15	Failing to stop at steady or flashing red light signal.	\$100 fine.
21655.5, 21655.8, 42001.11	Unauthorized use of lane for high-occupancy vehicles.	First offense: \$100–\$150 fine. Second offense within 1 year of prior conviction: \$150–\$200 fine. Third or subsequent offense within 2 years of 2 or more prior convictions: \$250–500 fine.

**Court Clerk Training Institute 2005**  
*Traffic Courtroom and Office Procedures*

IV. Arraignment, Plea, and Sentencing

Veh C §§	Infractions	Penalties
21806, 42001.12	Failing to yield right-of-way to emergency vehicle.	First offense: \$100–\$250 fine. Second offense within 1 year of prior conviction: \$150–\$500 fine. Third or subsequent offense within 3 years of 2 or more prior convictions: \$250–\$500 fine.
21951, 42001.17	Passing vehicle stopped at crosswalk.	First offense: \$100 fine. Second offense within 1 year of prior conviction: fine of up to \$200. Third or subsequent offense within 1 year of 2 or more prior convictions: fine of up to \$250.
21971, 42001.18	Causing injury to pedestrian.	First offense: \$220 fine. Second offense within 1 year of prior conviction: \$320 fine. Third or subsequent offense within 1 year of 2 or more prior convictions: \$370 fine.
22348(b), 42000.1	Speeding at more than 100 miles per hour.	Fine of up to \$500. Court may also order license suspension for up to 30 days for first offense. <a href="#">Veh C §13200.5</a> . Six-month mandatory license suspension for second conviction within 3 years of prior conviction. <a href="#">Veh C §13355(a)</a> . One-year mandatory license suspension for third or subsequent conviction within 5 years of 2 or more prior convictions. <a href="#">Veh C §13355(b)</a> . Conviction has traffic violation point count of two points. <a href="#">Veh C §12810(d)(1)</a> .
22451– 22452, 42001.16	Stops at railroad crossings by vehicles, trucks, and buses	First offense: \$100 fine. Second offense within a year: \$200 fine. Third offense within a year of two others: \$250 fine.
22454– 22454.5	Meeting or overtaking school bus displaying flashing red light signal.	First offense: \$150–\$250 fine. Second offense: \$500–\$1000 fine. Third or subsequent offense within 3 years of 2 or more prior convictions: mandatory 1-year license suspension by DMV.
22500(i), (l), 42001.5	Parking along curbside space authorized for loading and unloading bus passengers, or parking in front of curb constructed to provide wheelchair accessibility to sidewalk.	Court may suspend that portion of fine above \$100.

**Court Clerk Training Institute 2005**  
*Traffic Courtroom and Office Procedures*

IV. Arraignment, Plea, and Sentencing

Veh C §§	Infractions	Penalties
22507.8, 42001.5	Parking in space designated for disabled persons	\$250 minimum fine. No portion may be suspended, except the court may suspend fine if defendant possessed valid special identification license plate or placard at time of offense but failed to display it. Fine may be paid in installments if court determines defendant is unable to pay entire amount in one payment.
22523	Abandoning vehicle on highway or on public or private property.	Minimum \$100 fine. Fine may not be suspended, but may be paid in installments if judge determines that defendant is unable to pay entire amount in one payment. Defendant must also provide proof that costs of removing and disposing of vehicle have been paid. This proof is not required if defendant furnishes proof that vehicle was stolen before abandonment.
22526, 42001.1(a)	Obstructing the through passage of vehicles by entering intersection or marked crosswalk, or obstructing the through passage of railway vehicle by entering railroad crossing.	First offense: \$50–\$100 fine. Second offense within 1 year of prior conviction: \$100–\$200 fine. Third or subsequent offense within 2 years of 2 or more prior convictions: \$250–\$500 fine. No violation point for conviction of these offenses. <a href="#">Veh C §12810.4</a> .
23111– 23112, 23113(a), 42001.7       23111– 23112, 23113(a), 42001.7 (cont.)	Littering on public highway.	First offense: mandatory fine of \$100–\$1000, plus at least 8 hours picking up litter or cleaning up graffiti. Second offense: mandatory fine of \$500–\$1000, plus at least 16 hours picking up litter or cleaning up graffiti. Third or subsequent offense: mandatory fine of \$750–\$1000, plus at least 24 hours picking up litter or cleaning up graffiti.  Court may not suspend mandatory fines unless interest of justice would best be served by suspending fine. When suspending fine, court must require offender to pick up litter or clean up graffiti for at least 8 hours for every \$100 of fine suspended.
23117, 42001.4	Transporting an animal in the back of a vehicle without proper restraint or enclosure.	First offense: \$50–\$100 fine. Second offense within 1 year of prior conviction: \$75–\$200 fine. Third or subsequent offense within 1 year of 2 or more prior convictions: \$100–\$250 fine.

**Court Clerk Training Institute 2005**  
*Traffic Courtroom and Office Procedures*

IV. Arraignment, Plea, and Sentencing

Veh C §§	Infractions	Penalties
27156, 42001.14(a)	Disconnecting, modifying, or altering required pollution control device.	First offense: \$50–\$100 fine. Subsequent offense: \$100–\$250 fine.
27315(d)– (f), (h)–(i)	Violating mandatory seat belt law. See <i>People v Coyle</i> (1988) 204 CA3d Supp 1, 3–4, 251 CR 80 (upholding constitutionality of law).	First offense: maximum fine of \$20 plus penalty assessment of \$2. Instead of imposing fine and penalty, court may permit person convicted of first offense to attend traffic violator school. Subsequent offense: maximum penalty of \$50 plus penalty assessment of \$5. No violation point for conviction. Veh C §12810.2.
27360	Failing to use child passenger restraint system for child under 4 years of age or weighing less than 40 pounds.	First offense: fine of up to \$100. Court may reduce or waive fine for economically disadvantaged defendant, and may instead refer defendant to community education program on installation and use of child safety restraint. Subsequent offense: fine of up to \$250, which court may not waive; but court may reduce or waive fine for economically disadvantaged defendant, and refer defendant to community education program on installation and use of child safety restraint. Conviction within 37-month period has traffic violation point count of 1 point. Veh C §12810(j).
27360.5  27360.5 (cont.)	Failing to provide and properly use safety belt for child passenger between 4 and 16 years of age.	First offense: \$100 fine, which court may reduce or waive for economically disadvantaged defendant, and refer defendant to child restraint education program. Subsequent offense: \$250 fine, which court may not waive; but court may reduce or waive fine for economically disadvantaged defendant, and refer defendant to community education program on installation and use of child safety restraint.
38020, 42001.10	Operating an unregistered off-highway motor vehicle.	First offense: minimum \$50 fine. Subsequent offense: maximum \$250 fine.

## 2. Misdemeanors

**Probation** – The Court has the right to grant or deny probation on all misdemeanor cases. [Penal Code 1203(a)]

As used in this code, “probation” means the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of a probation officer. As used in this code, “conditional sentence” means the suspension of the imposition or execution of sentence and the order of revocable release in the community subject to conditions established by the court without the supervision of a probation officer. It is the intent of the Legislature that both conditional sentence and probation are authorized whenever probation is authorized in any code as a sentencing option for infraction or misdemeanors.

1. **Informal** also known as conditional sentence (unsupervised). Requires the defendant to comply with certain terms of the probation grant and orders of the court. The court monitors the probation.
2. **Formal** also known as supervised. A conditional release under the supervision of a probation officer. A probation officer monitors the defendant’s progress in complying with the terms and conditions of probation. All conditions of formal probation are monitored by the Probation Department although there could be some exceptions based on court policy and procedures.

- **Imposition of Sentence Suspended (“ISS”):**

1. The maximum sentence is not imposed
2. Defendant may be placed on Supervised Probation (Formal) or Conditional Sentence (Informal).
3. Defendant must agree to the terms and conditions of probation.
4. A violation of probation may result in probation being revoked and reinstated with new terms or conditions of probation, revoked and terminated, or revoked and the maximum sentence being imposed.

- **Execution of Sentence Suspended**



IV. Arraignment, Plea, and Sentencing

1. Defendant is sentenced to serve time in jail or prison.
  2. Enforcement of the jail/prison sentence is delayed and the defendant is placed on probation with various terms and conditions.
  3. A violation of probation will most likely result in probation being revoked and the previously suspended sentence imposed.
- 
- b) Purpose of Probation - Accepting a guilty plea and imposing probation in lieu of maximum jail time. All courts have the power to grant probation on misdemeanor and infraction cases pursuant to PC 1203.
  - c) Terms and Conditions - Any order of the sentence that the defendant needs to comply with. Example: pay a fine, violate no laws.
  - d) Plea to the Court - The defendant may enter a plea to the court at the arraignment stage of the proceedings, or at the pre-trial stage. The prosecution attorney is not involved in the sentence.
  - e) Negotiated Plea - The effect of plea bargaining in which the defendant agrees to plead guilty to the charge or to a reduced charge in return for a recommendation from the prosecutor or a disposition less severe than possible under the particular statute. ( Black's Law Dictionary )
  - f) Tahl Form / Waiver of Rights - A form the defendant is required to complete advising of his / her right and sentence. Defendant is to initial and sign therefore acknowledging and waiving each of the rights therein. (Boykin, Tahl or Mendella)

**Court Clerk Training Institute 2005**  
*Traffic Courtroom and Office Procedures*

IV. Arraignment, Plea, and Sentencing

Veh C §§	Misdemeanors	Penalties
2800, 40000.7(a)(2), 42001(b)	Failing to comply with officer's lawful order, signal, or direction to stop and submit to a lawful inspection of equipment. Otherwise, general penalties apply.	First offense: fine of up to \$50 or up to 5 days in jail. Second offense within 1 year of prior conviction: fine of up to \$100 and/or up to 10 days in jail. Third or subsequent offense within 1 year of 2 or more prior convictions: fine of up to \$500 and/or up to 6 months in jail.
2800.1, 40000.7(a)(3)	Fleeing from officer.	General penalty applies. Court may suspend defendant's license for up to 6 months. Veh C §13201(d). Vehicle may be impounded for up to 30 days. Veh C §14602.7(a)
2800.2	Driving with willful or wanton disregard for safety of others while fleeing from pursuing officer. See <i>People v Chicanti</i> (1999) 71 CA4th 956, 960–963, 84 CR2d 1 (conviction upheld when substantial evidence was presented that officer's vehicle was distinctively marked); <i>People v Mathews</i> (1998) 64 CA4th 485, 488–491, 75 CR2d 289 (conviction reversed when arresting officer was in plain clothes; statute requires officer to be in "distinctive uniform").	May be treated as either misdemeanor or felony, punishable by imprisonment in state prison or county jail for 6 months to 1 year and/or by fine of \$1000–\$10,000. Court may suspend defendant's license for up to 6 months. Veh C §13201(d). Conviction has traffic violation point count of 2 points. Veh C §12810(d)(1).
2800.3	Causing death or serious bodily injury while fleeing from pursuing officer. See <i>People v Johnson</i> (1993) 15 CA4th 169, 173–176, 18 CR2d 650 (second degree murder conviction for homicide that occurred while defendant was attempting to elude officer).	May be treated as either misdemeanor or felony, punishable by 3–5 years in state prison, up to 1 year in county jail and/or \$2000–\$10,000 fine. Veh C §§12810(d)(1), 13201(d), discussed under Veh C §2800.2, also apply.

**Court Clerk Training Institute 2005**  
*Traffic Courtroom and Office Procedures*

IV. Arraignment, Plea, and Sentencing

Veh C §§	Misdemeanors	Penalties
2803, 40000.7(a)(5), 42001(b)	Operating vehicle exceeding size limits or that is not safely loaded and constitutes an unsafe condition endangering any person. Otherwise, general penalties apply.	First offense: fine of up to \$50 or up to 5 days in jail. Second offense within 1 year of prior conviction: fine of up to \$100 and/or up to 10 days in jail. Third or subsequent offense within 1 year of 2 or more prior convictions: fine of up to \$500 and/or up to 6 months in jail. Penalties for violating the weight limitations are set forth in <a href="#">Veh C §42030.1</a> .
4461(b)–(d), 4461.5, 4463(b)–(c), 4463.3, 40000.7(a)(7)	Falsifying a disabled-person placard or displaying falsified placard with fraudulent intent.	\$500–\$1000 fine and/or 6 months in jail. In addition to, or instead of fine, court may impose civil penalty of up to \$1,500 for each conviction of Veh C §4461(c)–(d) and up to \$2500 for each conviction of Veh C §4463(b)–(c).
5500, 40000.7(a) (12)	Failure to deliver to DMV: certificate of ownership, registration card, and license plates for vehicle before dismantling it.	First offense: \$50–\$100 fine and/or 5 days to 6 months in jail. Subsequent offense: \$250–\$1000 fine and/or 30 days to 1 year in jail.
10501, 40000.9	Filing a false report of a vehicle theft with a law enforcement agency.	First offense: general penalty applies. Subsequent offense: may be treated as either misdemeanor or felony, punishable by imprisonment in state prison for 16 months, or for 2 or 3 years, or by imprisonment in county jail for up to 1 year.
10751, 42002.4	Purchase, sale, receipt, or possession of vehicles or components with removed or altered vehicle identification numbers.	Up to 6 months in jail if value of property does not exceed \$400. Up to 1 year in jail if value of property is more than \$400.
10752	Acquire, possess, sell, or offer for sale genuine or counterfeit vehicle identification number with intent to defraud.	\$250–\$500 fine plus 90 days to 1 year in jail.
10852–10853, 40000.9  10852–10853, 40000.9 (cont.)	Injuring or tampering with vehicle.	General penalty applies, except: Bailee may be given fine of up to \$1000 and/or sentence of up to 1 year in jail. <a href="#">Veh C §10854</a> . Defendant may be given fine of up to \$2000 and/or sentence of up to 1 year in jail for tampering with vehicle modified for disabled person. <a href="#">Veh C §42002.5</a> .

**Court Clerk Training Institute 2005**  
*Traffic Courtroom and Office Procedures*

IV. Arraignment, Plea, and Sentencing

Veh C §§	Misdemeanors	Penalties
12500(a), 40000.11(b)	Driving without a valid driver's license.	On a first conviction, the court must inform the defendant that a motor vehicle is subject to forfeiture as a nuisance if it is driven on a highway in this state by an unlicensed driver who is a registered owner of the vehicle and has a prior misdemeanor conviction for a violation of Veh C §12500(a). Veh C §14607.8.  The arresting officer may impound the vehicle if there is no passenger in the vehicle with a valid driver's license who may take charge of the vehicle. See <i>People v Green</i> (1996) 46 CA4th 367, 373, 54 CR2d 12.
12951, 40000.11(h)	Refusing to present driver's license when demanded to do so by officer who is enforcing provisions of Vehicle Code.	Court must dismiss charge if motorist produces license in court that was valid at time of his or her arrest. On third or subsequent charge, dismissal is within court's discretion. If motorist produces temporary, interim, or duplicate license, court may not dismiss charge unless motorist also furnishes proof from DMV that license was issued before arrest, that motorist was eligible for license, and that license has not been suspended or revoked. General penalty applies.
14601, 40000.11(k)	Driving after license has been suspended or revoked for reckless or negligent driving under Veh C §12806(a), (c), §12809(e), §12810, §23103, or §23104, when motorist has knowledge of suspension or revocation. Knowledge is conclusively presumed if DMV has mailed notice of suspension or revocation to motorist by certified mail, return receipt requested, and receipt has been signed and returned. Veh C §13106(a).	First offense: \$300–\$1000 fine plus 5 days to 6 months in jail. Second offense within 5 years of prior conviction for driving with suspended or revoked license: \$500–\$2000 fine plus 10 days to 1 year in jail. As condition of probation, defendant must serve at least 10 days in jail. Court may allow defendant to serve sentence on consecutive weekends. Veh C §14601.8. District attorneys in certain counties may enter into agreement with defendants who plead guilty or no contest, or are found guilty, to participate in home detention program and to attend specified classes in place of a jail sentence. Veh C §§14601.9–14601.10.  Under specified circumstances, court must, with certain exceptions, order installation of ignition interlock device on vehicle under Veh C §23575 for up to 3 years from the date of conviction.
14601, 40000.11(k) (cont.)		On a first conviction, the court must inform the defendant that a motor vehicle is subject to forfeiture as a nuisance if it is driven on a highway in this state by a driver with a suspended or revoked license, who is a registered owner of the vehicle and has a prior misdemeanor conviction for a violation

**Court Clerk Training Institute 2005**  
*Traffic Courtroom and Office Procedures*

IV. Arraignment, Plea, and Sentencing

Veh C §§	Misdemeanors	Penalties
		of Veh C §14601. Veh C §§14607.6, 14607.8. Conviction has traffic violation point count of two points. Veh C §12810(i).
14601.1, 40000.11(k)	Driving after license has been suspended or revoked for other reasons, when motorist has knowledge of suspension or revocation. Knowledge is conclusively presumed if DMV has mailed notice of suspension or revocation to motorist by certified mail, return receipt requested, and receipt has been signed and returned. Veh C §13106(a).	First offense: \$300-\$1000 fine and/or up to 6 months in jail. Second offense within 5 years of prior conviction for driving with suspended or revoked license: \$500-\$2000 fine plus 5 days to 1 year in jail. Veh C §§12810(i), 14601.8-14601.10, 14607.6, 14607.8, discussed under Veh C §14601, also apply.  Under specified circumstances, court must, with certain exceptions, order installation of ignition interlock device on vehicle under Veh C §23575 for up to 3 years from the date of conviction.
14601.2, 40000.11(k)	Driving after license has been suspended or revoked for driving under the influence, when motorist has knowledge of suspension or revocation. Knowledge is conclusively presumed if DMV has mailed notice of suspension or revocation to motorist by certified mail, return receipt requested, and receipt has been signed and returned. Veh C §13106(a).	First offense: \$300-\$1000 fine plus 10 days to 6 months in jail. As condition of probation, defendant must serve at least 10 days in jail. Second offense within 5 years of prior conviction for driving with suspended or revoked license: \$500-\$2000 plus 30 days to 1 year in jail. As condition of probation, defendant must serve at least 30 days in jail, or at least 10 days in jail on second conviction within 7, but more than 5, years since prior conviction. Defendant designated as habitual traffic offender under Veh C §14601.3(d)(2), (e)(3) must be given additional sentence of 180 days in jail and \$2000 fine. Veh C §§12810(i), 14607.6, 14607.8, discussed under Veh C §14601, also apply.  Court must order installation of ignition interlock device on vehicle under Veh C §23575 for up to 3 years from the date of conviction.
14601.3	Habitual traffic offender because of specified driving history record during period of license suspension or revocation.	First offense: \$1000 fine plus 30 days in county jail.  Second offense within 7 years of prior conviction: \$2000 fine plus 180 days in jail.  Veh C §§14601.9-14601.10, discussed under Veh C §14601, also apply.

**Court Clerk Training Institute 2005**  
*Traffic Courtroom and Office Procedures*

IV. Arraignment, Plea, and Sentencing

Veh C §§	Misdemeanors	Penalties
14601.5, 40000.11(k)	Driving after license has been suspended or revoked for failing to submit to blood, breath, or urine test, or preliminary alcohol screening, or for having blood alcohol concentration of 0.08 or more, when motorist has knowledge of suspension or revocation. Knowledge is conclusively presumed if DMV has mailed notice of suspension or revocation to motorist by certified mail, return receipt requested, and receipt has been signed and returned. Veh C §13106(a).	First offense: \$300-\$1000 fine and/or up to 6 months in jail. Second offense within 5 years of prior conviction for driving with suspended or revoked license: \$500-\$2000 fine plus 10 days to 1 year in jail. Court must consider defendant's ability to pay minimum fine and may reduce fine to less than statutory minimum in interest of justice and for reasons stated in record. Veh C §§12810(I), 14607.6, 14607.8, discussed under Veh C §14601, also apply.  Under specified circumstances, court must, with certain exceptions, order installation of ignition interlock device on vehicle under Veh C §23575 for up to 3 years from the date of conviction.
16030	Giving false evidence of insurance to officer or court, including an expired or cancelled insurance policy.	Fine of up to \$750 and/or up to 30 days in jail. Court must suspend or restrict driver's license for 1 year. Suspension may not be terminated until 1 year from date of suspension and until defendant files proof of financial responsibility. Suspension must be reinstated if defendant fails to maintain proof of financial responsibility for 3 years.
20001, 20003– 20004	Hit-and-run causing injury or death. See <i>People v Kroncke</i> (1999) 70 CA4th 1535, 83 CR2d 493 (driver in accident causing injury must identify himself or herself as the driver to officers).	May be treated as either misdemeanor or felony. See <i>People v Flores</i> (1996) 51 CA4th 1199, 1206–1207, 59 CR2d 637. Violation resulting in death or permanent serious injury is punishable by imprisonment in state prison for 2–4 years, imprisonment in county jail for 90 days to 1 year, and/or \$1000–\$10,000 fine. Court must find that defendant's leaving the scene without rendering aid proximately caused the victim's injuries to be permanent and serious. <i>People v Braz</i> (1998) 65 CA4th 425, 431–433, 76 CR2d 531. Court may reduce or eliminate minimum term of imprisonment in interests of justice and for reasons stated in record. Violation resulting in other injury is punishable by imprisonment in state prison, imprisonment in county jail for up to 1 year, and/or \$1000–\$10,000 fine. In imposing minimum fine, court must consider defendant's ability to pay, and may reduce amount of fine to less than the minimum in interests of justice and

**Court Clerk Training Institute 2005**  
*Traffic Courtroom and Office Procedures*

IV. Arraignment, Plea, and Sentencing

Veh C §§	Misdemeanors	Penalties
		for reasons stated in record. DMV must revoke defendant's license for 1 year. Veh C §13350(a)(3), (c). Conviction has traffic violation point count of 2 points. Veh C §12810(a).
20002, 40000.13(b)	Hit-and-run causing property damage.	Up to \$1000 fine and/or up to 6 months in jail. Court may also suspend defendant's license for up to 6 months. Veh C §13201(a). DMV may also suspend defendant's license. Veh C §13361(a). Court may condition probation on payment of restitution to owner of damaged property. See <i>People v Carbajal</i> (1995) 10 C4th 1114, 1123, 43 CR2d 681. Case may also be resolved by civil compromise under Pen C §1377. See <i>People v Tischman</i> (1995) 35 CA4th 174, 176–181, 40 CR2d 650. Conviction has traffic violation point count of 2 points. Veh C §12810(a).
21464  21464 (cont.)	Defacing or removing any traffic control device, traffic signpost, motorist callbox, or historical marker	Fine of up to \$3000. Willful violation resulting in injury or death is punishable by imprisonment in state prison or in county jail for up to 1 year and by \$5000-\$10,000 fine. Court may allow offender to perform community service in place of all or part of fine.
21651, 40000.13(d)	Driving wrong way on divided highway.	Willful violation resulting in injury or death may be treated as misdemeanor or felony, punishable by imprisonment in state prison or in county jail for up to 6 months. Conviction has traffic violation point count of 2 points. Veh C §12810(d)(1).
23103, 40000.15	Driving a vehicle with willful or wanton disregard for safety of persons or property.	\$145–\$1000 fine and/or 5–90 days in jail. Court may suspend defendant's license for up to 30 days on first conviction, up to 60 days on second conviction, and up to 6 months on any subsequent conviction. Veh C §13200. DMV may also suspend license on second or subsequent conviction. Veh C §13361(b). Vehicle may also be impounded for up to 30 days. Veh C §14602.7(a). Conviction has traffic violation point count of 2 points. Veh C §12810(c).

**Court Clerk Training Institute 2005**  
*Traffic Courtroom and Office Procedures*

IV. Arraignment, Plea, and Sentencing

Veh C §§	Misdemeanors	Penalties
23104, 40000.15	Reckless driving that proximately causes bodily injury.	\$220–\$1000 fine and/or 30 days to 6 months in jail. When defendant has prior conviction under Veh C §23103, §23104, §23109, §23152, or §23153, charge may be treated as misdemeanor or felony, punishable by imprisonment in state prison, imprisonment in county jail for 30 days to 6 months, and/or by \$220–\$1000 fine. Court may suspend defendant’s license for up to 6 months. Veh C §13201(b). DMV must revoke license for 1 year. Veh C §13350(a)(3), (c).
23109(a), 40000.15  23109(a), 40000.15 (cont.)	Engaging in speed contest on highway.	First offense: \$355-\$1000 fine and/or 24 hours to 90 days in jail. Court may suspend or restrict defendant’s license for 90 days to 6 months. Veh C §13352(a)(8). Second offense within 5 years of prior conviction: \$500-\$1000 fine plus 4 days to 6 months in jail. Court may also suspend or restrict defendant’s license for 6 months. Veh C §13352(a)(9). Court may order probation in suitable case. As condition of probation, defendant must serve 48 hours to 6 months in jail, and defendant’s license must be suspended or restricted for 6 months. Court may not strike prior conviction for sentencing purposes to avoid imposing, as part of sentence or term of probation, minimum jail term, or to avoid revoking, suspending, or restricting defendant’s license. Veh C §23109.5(a). Court must mark any restriction on defendant’s license and notify DMV. Court may permit defendant to serve sentence on his or her days off. If vehicle is registered to defendant, court may impound it for 1–30 days. Conviction has traffic violation point count of 2 points. Veh C §12810(d)(1).
23110(a)	Throwing any substance at a vehicle or occupant of a vehicle on a highway.	General penalty applies, except that willful violation with intent to do great bodily injury is a felony, punishable by imprisonment in state prison. Veh C §23110(b).
23112.5, 40000.70	Failing to notify CHP or other appropriate agency as soon as possible of hazardous spill on highway caused by motorist.	Mandatory fine of at least \$2000.
23114, 40000.16	Second or subsequent violation of Veh C	Treated as misdemeanor, not infraction. General penalty applies



**Court Clerk Training Institute 2005**  
*Traffic Courtroom and Office Procedures*

IV. Arraignment, Plea, and Sentencing

Veh C §§	Misdemeanors	Penalties
	§23114, relating to preventing contents of vehicle from spilling on highway, within 2 years of prior violation.	
23224	Possession of alcoholic beverage in vehicle by driver or passenger under age 21.	Fine of up to \$1000 and/or up to 6 months in jail. Court must suspend defendant's license for 1 year. Veh C §13202.5(a), (d)(4). Court may impound defendant's vehicle for 1–30 days.
23247(e)–(g)  23247(e)–(g) (cont.)	Driving by person with restricted license under Veh C §13352 or §23575 of vehicle not equipped with functioning ignition interlock device.	Fine of up to \$5000 and/or up to 6 months in jail.  If defendant's driving privilege is restricted under Veh C §13352, court must notify DMV to terminate the restriction and to suspend or revoke defendant's license for the remaining period of the originating suspension or revocation and until all reinstatement requirements under Veh C §13352 are met.  If defendant's driving privilege is restricted under Veh C §23575, court must notify DMV to suspend defendant's license for 1 year.
38316, 40000.24(b)	Reckless driving of off-highway motor vehicle.	\$50–\$500 fine and/or 5–90 days in jail.
38317, 40000.24(c)	Reckless driving of off-highway motor vehicle causing personal injury.	\$100–\$1000 fine and/or 30 days to 6 months in jail.

**G. MANDATORY MINIMUM SENTENCE - DRIVING UNDER THE INFLUENCE**

**1. VC 23152 (a) and (b) – 1<sup>st</sup> Offense**

- a. 3 years informal probation
- b. 48 hours to 6 months in jail
- c. Not drive with a measurable amount of alcohol in system
- d. Submit to chemical test
- e. Not drive without a valid
- f. Pay a minimum fine of \$390.00 plus Penalty Assessment
- g. Pay \$50.00 Alcohol Abuse and Education and Prevention Penalty Fee.
- h. Pay \$37.00 Alcohol Testing Fee
- i. Pay \$10.00 Cite and Release Fee
- j. Pay \$100.00 State Restitution Fine
- k. Attend and complete 1<sup>st</sup> Offender Alcohol Program – Level 1 or Level II
  - 1) Level I - 3 Month
  - 2) Level II - 6 Month.....BAC .20% or more  
By weight
- l. 90 day California drivers license restriction. If there is no 90 day license restriction, the Department of Motor Vehicles (DMV) will suspend the driving privilege for six (6) months. (Advisement: DMV sanctions may be more severe than the court's and he/she must obey any license restriction, suspension, or revocation imposed by DMV.)
- m. Violate no laws

**H. 1<sup>st</sup> OFFENSE - DUI ENHANCEMENTS**

**1. Defendant – Age 18 - 21**

- a. Order an additional one-year suspension or delay in issuance of the license. Exception based on critical need to drive. [VC 13202.5]
- b. Defendant may petition the court for a license restriction in lieu of suspension, to drive to school, etc. If the court grants the request, the court will need to make a finding of good cause.

**2. Minor Passenger(s) - Under 14 years**

Serve an additional 48 hour jail unless also convicted of PC 273a.  
[VC 23582]

**3. Excessive Speed**

Serve an additional (consecutive) 60 days jail if speed exceeds the posted speed limit by 30 or more miles per hour on the freeway or 20 or more miles per hour on any other road. Treatment program is required if probation is NOT granted.  
[VC 23582]

**4. Refusal**

The court must consider as a special factor that may justify enhancing penalties in sentencing and in determining whether to grant probation. [VC 23578]

**I. MANDATORY MINIMUM SENTENCE- DRIVING UNDER THE INFLUENCE**

**1. VC 23152(a) and (b) – 2<sup>nd</sup> Offense**

1. 3 Years Informal Probation
2. Violate no laws
3. Not drive with a measurable amount of alcohol in system
4. Submit to chemical test
5. Not drive without a valid California drivers license and valid insurance
6. Pay a fine of \$390.00 plus Penalty Assessment
7. Pay \$50.00 Alcohol Prevention Penalty Fee
8. Pay \$37.00 Testing Fee
9. Pay \$100.00 State Restitution Fund Fine
10. Pay Alcohol and Drug Assessment Fee of not more than \$200
11. Serve 96 hours in jail
12. Attend and complete 18 month (Multiple Offender) alcohol program
13. Advise that DMV sanctions may be more severe than the court's and that he/she must obey any license restriction, suspension, or revocation imposed by DMV.
14. Pursuant to VC 23594, the court must order vehicle impoundment (applicable if the second offense is within five (5) years of the prior offense). If not ordered, the court must state circumstances on the record.

**J      2<sup>nd</sup> OFFENSE - DUI ENHANCEMENTS**

**1.      Defendant Age 18 – 21 Yars**

- a.      Order an additional one (1) year license suspension or delay in issuance license. Exception based on critical need to drive. [VC 13202.5]
- b.      For each successive offense, the court shall suspend the person's driving privilege for one (1) additional year.
- c.      Defendant may petition the court for a license restriction in lieu of suspension, to drive to school, etc. If the Court grants the request, the Court will need to make a finding of good cause.

**2.      Minor Passenger(s) Under - 14 years**

Serve an additional ten (10) days unless the defendant is also convicted of VC 273a (terminal or probationary). [VC 23572(a)(2)(c)]

**3.      Excessive Speed**

Serve an additional (consecutive) 60 days jail if speed exceeds the posted speed limit by 30 or more miles per hour on the freeway or 20 or more miles per hour on any other road. Treatment program may be required. [VC 23582]

**4.      Refusal**

Serve additional ninety-six (96) hours jail (terminal or probationary). [VC 23577]

**The Court must consider as a special factor that may justify enhancing penalties in sentencing and in determining additional or enhanced terms and conditions of probation. [VC 23578]**

**K. Mandatory Minimum Sentence - DRIVING UNDER THE INFLUENCE**

**1. VC 23152(a) and (b) – 3<sup>rd</sup> Offense**

1. 3 Years Informal Probation
2. Violate no laws
3. Not drive with a measurable amount of alcohol in system
4. Submit to chemical test
5. Not drive without a valid California drivers license and valid insurance
6. Pay a fine of \$390.00 plus Penalty Assessment or serve 13 days in jail
7. Pay \$50.00 Alcohol Prevention Penalty Fee
8. Pay \$37.00 Testing Fee
9. Pay \$10.00 Cite and Release Fee
10. Pay \$100.00 State Restitution Fund Fine
11. Pay Alcohol and Drug Assessment Fee of not more than \$200
12. Serve 120 hours in jail
13. Attend and complete 18 month (Multiple Offender) Alcohol Program if not previously completed.
14. Driver's license restricted for duration of program (OR two (2) year suspension – advisement only)
15. Designated as an **Habitual Offender** pursuant to VC 13350(b), VC 14601.3(e)(3).
16. Impound the vehicle for up to ninety (90) days if offense is within five (5) years of two (2) or more prior DUI convictions, unless "interest of justice" exception applies pursuant to VC 23594.

**L. 3<sup>rd</sup> OFFENSE DUI ENHANCEMENTS**

**1. Defendant Age 18 – 21 Years**

- a. Order and additional one (1) year license suspension or delay in issuance of a license. Exception based on critical need to drive. [VC 13202.5]
- b. For each successive offense, the court shall suspend the person's driving privilege for one (1) year.
- c. Defendant may petition the court for a license restriction in lieu of suspension, to drive to school, etc. Court will need to make a finding of good cause.

**2. Minor Passengers Under 14 Years**

Serve an additional 30 days jail unless defendant is also convicted of PC 273a (terminal or probationary)

**3. Excessive Speed**

Serve an additional (consecutive 60 days jail if speed exceeds the posted speed limit by 30 or more miles per hour on the freeway or 20 or more miles per hour on any other road. Treatment program may be required. [23582]

**4. Refusal**

- a. Serve an additional ten (10) days jail (terminal or probationary). [VC 23577]
- b. The court shall consider as a special factor that may justify enhancing penalties in sentencing and in determining additional or enhanced terms and conditions of probation. [VC 23578]

**L. FEES, FINES AND PENALTIES**

**1. AIDS Prevention Education (PC 1463.23):**

A portion of the base fine is allocated to a fund used exclusively to pay for costs of establishing an AIDS education program.

**2. Appointed Council Registration Fee (PC 987.5):**

Every defendant shall be assessed a registration fee not to exceed twenty-five dollars (\$25) when represented by appointed counsel. Note: No fee shall be required of any defendant financially unable to pay the fee.

**3. Booking Fee [GC 29550(d), GC 29550.1, GC 29550.2, and GC 29550.3]**

Any person booked into the county jail pursuant to any arrest by any city, special district, school district, community college district, college, university, or other local arresting agency, is subject to a criminal justice administration fee for administrative costs, which include overhead costs incurred in the booking process.

If the person has the ability to pay, a judgment of conviction shall include the order of payment and execution shall be issued on the order in the same manner as a judgment in a civil action, but the order shall not be enforceable by contempt.

The court shall, as a condition of probation, order the convicted person to reimburse the county for the fee.

**4. Citation Processing Fee [PC 1463.07;GC 29550(f)]:**

A citation processing fee in the amount of ten dollars (\$10) shall be collected from each person cited and released by any peace officer in the field or at a jail facility upon conviction of any criminal offense, other than an infraction, related to the criminal offense cited in the notice to appear. However, the court may determine a lesser fee than otherwise provided in this subdivision upon a showing that the defendant is unable to pay the full amount.

**5. Civil Assessment for Failure to Appear or Pay Fine [PC 1214.1(a)]:**

When a defendant fails to appear or pay a fine, the court may add an additional fine to any other penalty in infraction, misdemeanor, or felony cases, the court may impose a civil assessment of up to two hundred fifty dollars (\$250) against any defendant who

fails, after notice and without good cause, to appear in court for any proceeding authorized by law or who fails to pay all or any portion of a fine ordered by the court.

**6. Criminal Administrative Screen Fee [PC 1463.07;GC 29550(f)]**

An administrative screening fee of twenty-five dollars (\$25) shall be collected from each person arrested and released on his or her own recognizance upon conviction of any criminal offense related to the arrest other than an infraction.



IV. Arraignment, Plea, and Sentencing

7. **Citation Processing Fee [PC 1463.07; GC 29550(f)]**  
A citation processing fee in the amount of ten dollars (\$10) shall be collected from each person cited and released by any peace officer in the field or at jail facility upon  
Conviction of any criminal offense, other than an infraction, related to the criminal Offense cited in the notice to appear. Note: the court may charge a lesser fee, if the defendant is unable to pay.
8. **Criminal Fine Surcharge (PC 1465.7):**  
A state surcharge of 20 percent shall be levied on the base fine used to calculate the state penalty assessment. This surcharge shall be in addition to the state penalty assessment.
9. **Diversion Restitution Fee (PC 1001.90):**  
For all persons charged with a felony or misdemeanor whose case is diverted by the court pursuant to this title, the court shall impose on the defendant a diversion restitution fee in addition to any other administrative fee provided or imposed under the law.
10. **DNA Identification Fund Penalty: (GC 76104.6)**  
(a) For the purpose of implementing the DNA Fingerprint, Unsolved Crime and Innocence Protection Act, there shall be levied an additional penalty of one dollar for every ten dollars (\$10) or fraction thereof in each county which shall be collected together with and in the same manner as the amounts established by Section 1464 of the Penal Code (Penalty Assessment).
11. **DUI Restitution (PC 1463.18):**  
When the court imposes a fine for a conviction of a violation of Section 23152 or 23153 of the Vehicle Code, a portion of the moneys collected shall be transferred to the Restitution Fund. The amount deposited to the Restitution Fund pursuant to this section shall be used for the purpose of indemnification of victims pursuant to Section 13965 of the Government Code, with priority given to victims of alcohol-related traffic offenses.
12. **Lab Service Fee- [1463.14(a) – (b)]**  
A certain amount of each fine is collected for each conviction of certain alcohol related violations of the Vehicle Code shall be deposited in a special account which shall be used exclusively to pay for the cost of performing for the county, or a city or special district within the county, analysis of blood, breath or urine for alcohol content or for the presence of drugs, or for services related to that testing.
13. **Mandatory Restitution Fine [PC 1202.4(b)]**  
In every case where a person is convicted of a crime, the court shall impose a separate and additional restitution fine, unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record.

14. **Night Court Assessment (VC 42006):**

The court may add a special assessment in an amount equal to one dollar (\$1) for every fine and forfeiture, imposed and collected by any court which conducts a night session of the court, on all offenses involving a violation of a section of this code or any local ordinance adopted pursuant to this code, except offenses relating to parking.

15. **Penalty Assessments [PC 1464; GC 76000(a) GC 70372; GC 70375(b)(1)]**

An “additional penalty” of between \$17.00 and \$22.00 shall be added upon every \$10.00, or fraction thereof, over every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses. The Penalty Assessment is as follows:

- \$10.00 for the state penalty required by Penal Code Section 1464
- \$7.00 county penalty required by Government codes section 76000
- \$0.00 - \$5.00 for the court construction fund required by Government Code Section 70372(a). Please note that the amount varies from county to county. The amount applicable to each county is as follows:

16. **Prior Conviction Fee [VC 40508.6 (a)]**

An assessment for the cost of recording and maintaining a record of the defendant's prior convictions for violations of this code. The assessment shall be payable at the time of payment of a fine or when bail is forfeited for any subsequent violations of this code other than parking, pedestrian, or bicycle violations.

17.

**Probation Costs [PC 1203.1b]**

In any case in which defendant is convicted of an offense and is the subject of any preplea or presentence investigation and report, whether or not probation supervision is ordered by the court, and in any case in which a defendant is granted probation or given a conditional sentence, the probation officer, or his or her authorized representative, taking into account any amount that the defendant is ordered to pay in fines, assessments, and restitution, shall make a determination of the ability of the defendant to pay all or a portion of the reasonable cost of any probation supervision or a conditional sentence of conducting any preplea investigation and preparing any preplea report. If the defendant has the ability to pay, the court may order the defendant to pay additional costs. All funds received is allocated for the operating expense of the county probation department.

**18. Probation Revocation Restitution Fine (PC 1202.44)**

In every case in which a person is convicted of a crime and a condition sentence or a sentence that includes a period of probation is imposed, the court shall at the time of imposing the restitution fine, assess an additional probation revocation restitution fine in the same amount as that imposed pursuant to 1202.4. This revocation of probation or of a conditional sentence, and shall not be waived or reduced by the court, absent compelling and extraordinary reasons. Probation revocation restitution fines shall be deposited in the Restitution fund in the State Treasury.

**19. Proof of Corrections Fee [VC 40611; GC 68084(a)]**

Upon proof of correction of an alleged violation of Section 12500 or 12951, or any violation cited pursuant to Section 40610, or upon submission of evidence of financial responsibility pursuant to subdivision (e) of Section 16028, the clerk shall collect a ten dollar (\$10) transaction fee for each case.

**20. Proposition 36 Assessment Fee [PC 1210.1(a)]**

In addition to any fine assessed under other provisions of law, the trial judge may require any person convicted of a nonviolent drug possession offense who is reasonably able to do so to contribute to the cost of his or her own placement in a drug treatment program.

**21.**

**Seat Belt Assessment (Priors) [VC 27315(h)]**

Any seatbelt violation of 27315 (d), (e), or (f) is an infraction punishable by a fine of not more than twenty dollars (\$20) for a first offense, and a fine of not more than fifty dollars (\$50) for each subsequent offense.

**22. Traffic School Assessment [VC 42007.1(a), VC 11205(a)]**

The collect an addition fee for traffic school in an amount equal to the total bail set forth for the eligible offense on the uniform countywide bail schedule plus twenty-four dollars (\$24). The revenue from the twenty-four dollar (\$24) fee collected under this section shall be deposited in the county general fund.

Additionally, the court may collect an additional \$5.00 a fee to defray the costs incurred by the agency for the monitoring reports and services provided to the court. The court may delegate collection of the fee to the agency

**23. Uniform Bail Schedule [PC 1269(b); VC 40310]**

To achieve uniformity of bail and penalties through the state in traffic, boating, fish and game, forestry, public utilities, parks and recreation, and business licensing cases, trial court judges in each county, shall annually revise and adopt a uniform countywide schedule of bail and penalties for all misdemeanor and infraction cases.

PC 1269 (c) It is the duty of the superior court judges in each county to prepare, adopt, and annually revise a uniform countywide schedule of bail for all bailable felony offenses and for all misdemeanor and infraction offenses except Vehicle Code infractions. The penalty schedule for infraction violations of the Vehicle Code shall be established by the Judicial Council in accordance with Section 40310 of the Vehicle Code.

PC 1269(d) A court may, by local rule, prescribe the procedure by which the uniform countywide schedule of bail is prepared, adopted, and annually revised by the judges. If a court does not adopt a local rule, the uniform countywide schedule of bail shall be prepared, adopted, and annually revised by a majority of the judges.

VC 40310. The Judicial Council shall annually adopt a uniform traffic penalty schedule, which shall be applicable to all non-parking infractions specified in the vehicle code, unless in a particular case before the court the judge or authorized hearing officer specifies a different penalty. No penalty shall be established for any infraction in an amount, exclusive of any additional penalty added pursuant to Section 1464 of the Penal Code, in excess of the amount of the maximum fine pursuant to Section 42001 or 42001.5.

**24. Victim Restitution [PC 1202.4(f)]**

In every case in which a victim has suffered economic loss as a result of the defendant's conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court. If the amount of loss cannot be ascertained at the time of sentencing, the restitution order shall include a provision that the amount shall be determined at the direction of the court. The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states them on the record.

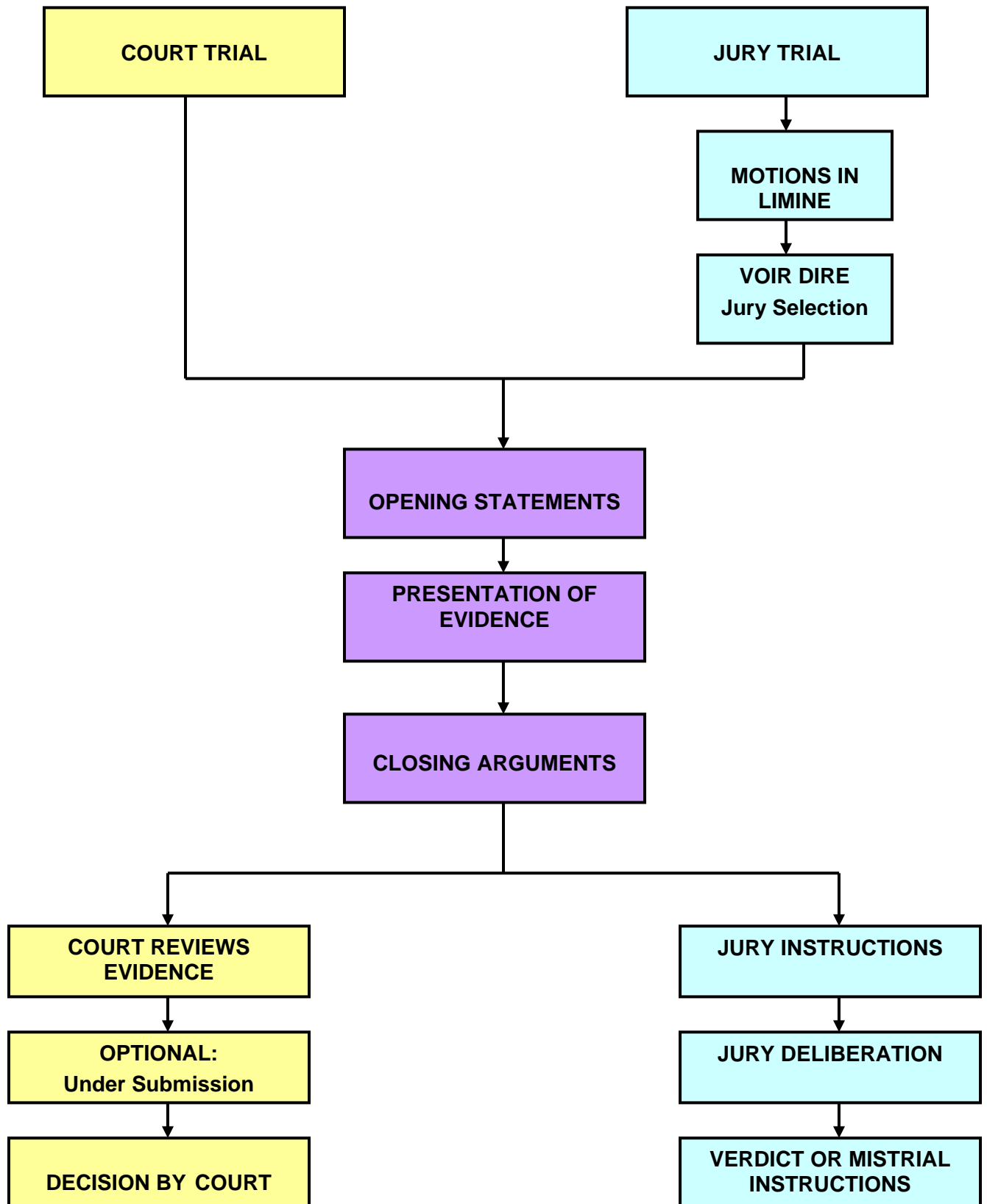
25. **Warrant Assessment [VC 40508.5 or PC 853.7(a)]**

In addition to the fees authorized or required by any other provision of law, a county may, by resolution of the board of supervisors, require the courts of that county to impose an Assessment of fifteen dollars (\$15) upon every person who violates his or her written promise to appear or a lawfully granted continuance of his or her promise to appear in court or before a person authorized to receive a deposit of bail, or who otherwise fails to comply with any valid court order for a violation of any provision of this code or local ordinance adopted pursuant to this code.

26. **Warrant/Hold Assessment [VC 40508.6(b)]**

An assessment for all defendants whose driver's license or automobile registration is attached or restricted pursuant to Section 40509 or 40509.5, to cover the cost of notifying the Department of Motor Vehicles of the attachment or restriction.

**A. SEQUENCE OF TRIAL EVENTS**



## **B. JURY TRIALS**

### **1. Clerk's Preparation for Trial**

- a. Obtain case file.
- b. Check custody status of the defendant(s). Inform the bailiff of the case assignment, the number of defendants, and the custody status.
- c. Check if the defendant requires an interpreter. Check if any witnesses require an interpreter. If so, make the necessary arrangements, including whether the language will require a certified or non-certified interpreter. (CRC 984.2)
- d. Verify the name of the defendant and the charges listed on the docket against the complaint.
- e. Check the names of counsel. If possible, get business cards or obtain phone numbers, fax numbers, pager numbers and addresses.
- f. Make a copy of the complaint for you and the court reporter (if one is present).
- g. Check the file for any previously filed in limine motions and ask counsel if there are any new in limine motions. Copy the front page of each motion for your reference.
- h. Exhibits - Ask counsel if there are exhibits that need to be pre-marked (if your court pre-marks exhibits.)
- i. Inform the judge that a case has been assigned for trial. Give the judge the case file and the in limine motions. Ask the judge how he/she wishes to proceed.
- j. Make yourself a "trial folder" to keep miscellaneous trial related material in. Keep this folder handy throughout the trial.
- k. While Court and Counsel confer in chambers:
  - (1) Prepare jury seating charts
  - (2) Prepare an envelope in which to seal jury information (may be placed in your "trial folder.")
- l. After Court and Counsel have conferred:
  - 1) When the judge informs you that a jury panel is needed, call the Jury Commissioners' Office/Jury Services Clerk.

- 2) Obtain the witness lists from counsel. Makes copies for judge, clerk, reporter, and bailiff. (If witness lists required in your court).
- 3) Make sure your work area is secure.

## **2. Motions in Limine**

### **a. Definition and Purpose**

- 1) Motions to be heard at the beginning of the trial.
- 2) Used to determine what evidence will be presented to the jury (most commonly to exclude evidence from the jury)

### **b. Common in Limine Motions**

- 1) Evidence Code 402 Motions - the existence of a preliminary fact is disputed. The existence or non-existence must be determined.
- 2) Motion to Suppress Confession (EC 402(b)) - to withhold defendant's confession from the jury based on grounds that it was coerced and not intelligently made.
- 3) Motion to Preclude (or Include) Testimony/Exhibit (EC 403) - to block evidence from the case, such as some particularly gruesome photographs or an expert's opinion, OR to include certain evidence, such as the probability that a third party was the actual culprit or the results of a polygraph test.
- 4) Motion for Severance - to sever the trial from co-defendant(s)
- 5) Motion to Bifurcate Priors - to have a separate trial on alleged priors (EC 352)
- 6) Motion to Exclude Witnesses - to keep witnesses out of the courtroom prior to their examinations. (EC 777 and/or PC 867)



**3. Oaths**

**WITNESS OATH**

[CCP 2094(1)]

“Do you, solemnly state that the evidence  
you shall give in this issue (or matter) shall be  
the truth, the whole truth, and nothing but the truth,  
so help you God?”

**WITNESS – AFFIRMATION**

[CCP 2094(2)]

“Do you Solemnly State under the penalty of Perjury  
that the evidence you shall give in this issue (or matter)  
shall be the truth, the whole truth, and nothing but the truth?”

**CHILD UNDER 10 YEARS OF AGE OATH**

(EC 710)

Suggested: Do you promise to tell the truth?

**PROSPECTIVE JURORS – Acknowledgment and Agreement**

[CCP 232(a)]

"Do you, and each of you, understand and agree that you will  
accurately and truthfully answer, under penalty of perjury, all  
questions propounded to you concerning your qualifications and  
competency to serve as a trial juror in the matter pending before  
this court; and that failure to do so may subject you to criminal  
prosecution."

**TRIAL/ALTERNATE JURORS– Acknowledgment and Agreement**

[CCP 232(b)]

"Do you and each of you understand and agree that  
you will well and truly try the cause now pending before  
this court, and a true verdict render according only to the  
evidence presented to you and to the instructions of the court?"

**OATH TO BAILFF TO TAKE CHARGE OF JURY**  
(PC 1121, CCP 613)

Do you solemnly state that you will take charge of the jury and keep them together, that you will not speak to them yourself nor allow anyone else to speak to them upon any subject connected with this case, except by order of the court and when they have agreed up on a verdict, you will return them into this court, so help you God?

**OATH TO BAILIFF (JURY TO SCENE)**  
(PC 1121, CCP 613)

Do you solemnly state that you will suffer no person to speak to or communicate with the jury, nor to do so yourself, on any subject connected with this case, and that you will return them into court without unnecessary delay after a view of the place or property?

**OATH TO INTERPRETER**  
(EC 751)

Do you solemnly state that you will make a true interpretation of English into \_\_\_\_\_ and \_\_\_\_\_ into English using your best skill and judgment in the cause now pending before this Court?

**OATH TO INTERPRETER - SIGN LANGUAGE**  
(EC 751)

Do you solemnly state that you will make a true interpretation of spoken English into Sign Language and Sign Language into spoken English using your best skill and judgment in the cause now pending before this Court?

**4. Jury Selection (CCP 206 and CCP 237)**

**a. Jury Confidentiality**

ALL Juror information is confidential in a criminal trial. This includes names, addresses, and phone numbers. This can be handled in a variety of ways depending upon each court's policy and procedure. The most common methods follow:

**1) Method 1**

- a) Juror names are never written in the minutes.
- b) The jurors are referred to by their seat numbers only.
- c) Because the jurors' names are used in open court during jury selection, the court reporter's notes will be ordered sealed at its conclusion.
- d) Seating charts used by counsel during voir dire may be collected and destroyed at its conclusion.
- e) A jury list showing the seated panel and alternates is prepared to preserve the record in the event of an appeal or a petition for the information. (CCP 237) The jury list will be sealed at the conclusion of the trial.
- f) All court documents containing the names of jurors (verdicts, jury notes, etc.) will be sealed at the conclusion of the trial.(CCP237(2))

OR

**2) Method 2**

There is no change in trial procedure. Jurors' names are treated in the normal manner during trial. They are written in the minutes and on related documents. At the end of the trial the clerk will proceed as follows:

- a) Edit the names from all minutes and court documents.
- b) Place redacted copies of the minutes and documents in the case file.
- c) Seal original minutes and court documents that mentioned jurors' names at the conclusion of the trial.

If minutes are entered on an automated system, the procedure described in #2 will be difficult if not impossible to achieve.

**b. Preparation**

- 1) Distribute Seating Charts.
- 2) Upon arrival of prospective jurors, welcome them to the courtroom, take roll, and administer the "Acknowledgement and Agreement" to the prospective jurors. (CCP 232(a))

**c. Introductory Procedure**

- 1) Court introduces self, staff, counsel, and defendant.
- 2) Information/Indictment may be read or a statement of the nature of the case may be presented.
- 3) Names of potential witnesses are read.

**d. Jury Selection**

At the discretion of the judge, the court may:

- 1) Examine 12 initial jurors
- 2) Examine 18 jurors ("six pack")
- 3) Examine 24 jurors
- 4) Examine the entire panel of prospective jurors.

**e. Types of Challenges**

**Challenge for Cause (CCP 225(b))**

- 1) CCP 225(b)(1)(A) - General disqualification that the juror is disqualified from serving on the trial.
- 2) CCP 225(b)(1)(B) - Implied bias as, when the existence of the facts ascertained, in judgment of law disqualifies the juror.
- 3) CCP 225(b)(1)(C) - Actual bias is the existence of a state of mind on the part of the juror in reference to the case, or to any of the parties, which will prevent the juror from acting with entire partiality, and without prejudice to the substantial rights of any party.
- 4) By court - a juror is obviously not acceptable for this trial (pre-paid vacation, obvious bias, etc.)
- 5) By counsel - the right to challenge a prospective juror for a specific reason.
- 6) All challenges for cause must be made before peremptory challenges are used. (ccp 226(c))

**Peremptory Challenge (CCP 231)**

- 1) If crime punishable by death or life imprisonment, each side is entitled to twenty peremptory challenges.
- 2) If not crime punishable by death or life imprisonment, each side is entitled to ten peremptory challenges.
- 3) For two or more defendants, ten (or twenty) joint plus five additional for each defendant. Prosecutor entitled to challenges equal to the number of combined defense challenges.
- 4) If the charge being tried is punishable with a maximum term of 90 days or less, the defendant is entitled to six and the state to six peremptory challenges. When two or more defendants are jointly tried, the challenges are 6 joint plus 4 additional challenges for each defendant. The prosecutor is entitled to challenges equal to the combined total of the defense challenges.
- 5) The right to challenge a prospective juror without assigning a reason for the challenge.
- 6) Peremptory challenges commence with the prosecutor/people

**f. Swearing the Jury to Try the Cause**

- 1) All challenges have been exhausted and/or counsel are satisfied with the jury.
- 2) The Court will direct the clerk to administer the “Acknowledgment and Agreement” admonishment to the trial jurors. (CCP 232(b))

**g. Selection of Alternate Jurors**

- 1) The Court will determine whether or not alternate jurors are required, and, if so, how many.
- 2) Selection will proceed.
- 3) After the challenges are exhausted, or before if counsel are satisfied, the Court will direct the clerk to administer the “Acknowledgment and Agreement” admonishment to the trial alternate jurors. (CCP 232)

**h. Reading of Information (Indictment) (PC 1093)**

- 1) Clerk reads Information/Indictment exclusive of prior allegations.
- 2) Reading of Information/Indictment is waived.

**i. Jury Admonishment (PC 1122)**

- 1) Court must admonish the sworn jury before the people's opening statement.
- 2) The admonishment states the jury's function and the court's instructions:
  - a. Not to discuss the case
  - b. Not to view the premises
  - c. Not to read or listen to news coverage of the case
  - d. Not to "sell their story" prior to and within 90 days of discharge from the case
  - e. Report any attempt to influence jurors
  - f. A notation that the admonishment was given must be made in the minutes.

**5. Opening Statements**

- a. A brief outline by counsel describing what the evidence will be and what it will prove (a "road map" of the trial).
- b. The Prosecution and the Defense are entitled to make opening statements before evidence is present.
- c. Sequence:
  - 1) Prosecution (People)
  - 2) Defense
- d. The Defense may choose to reserve opening statement until the defendant's case in chief.
- e. The Defense may choose to waive opening statement.

**6. Evidence Phase**

- a. Witness - one who is called to testify before a court.
  - 1) Types
    - a) Percipient
    - b) Expert
  - 2) Clerk must note in minutes:
    - a) Exact name of witness, including any title
    - b) Called on whose behalf
    - c) Whether adverse witness
    - d) Whether called out of order
    - e) Whether previously sworn

**Red-Handed**

The scene was San Diego Superior Court. Two men were on trial for armed robbery. An eyewitness took the stand, and the prosecutor moved carefully:

"So, you say you were at the scene when the robbery took place?"

"Yes."

"And you saw a vehicle leave at a high rate of speed?"

"Yes."

"And did you observe the occupants?"

"Yes, two men."

"And," the prosecutor boomed, "are those two men present in court today?"

At this point the two defendants sealed their fate. They raised their hands.

— Tom Blair in San Diego Union



- b. Exhibit - a physical object or document produced by a court ... as a voucher, or in proof of facts, ... and is marked for identification and ... made a part of the case. (*Black's Law Dictionary*) (See 1417-1417.8 PC)
  - 1) Identified - The first time that an exhibit is referred to or given to a witness for review:
    - a) A tag or label is affixed with an identifying number or letter.
    - b) It is described on the record.
    - c) The number/letter, offering party, and description of exhibit must be listed in the minutes and on an exhibit list.
    - d) Once introduced, marked for identification only, or received/admitted into evidence, the exhibit becomes the sole responsibility of the clerk.(PC 1417)
  - 2) Received in Evidence
    - a) Counsel offer exhibits to be received in evidence.
    - b) Court rules on receipt of exhibits.
    - c) All exhibits received will be noted in the minutes and on the exhibit list.
    - d) The date the exhibit is received will be noted on the exhibit tag.

- 3) Special Handling
  - a) Weapons, drugs, and valuables must be locked up during recesses and at the end of each day.
  - b) Guns must be fitted with trigger locks or otherwise made to be inoperable. Have bailiff check all weapons.
  - c) Syringes and bloodstained items should be pre-packaged in plastic bags or some other type of protective packaging.
  - d) Notify Court of any exhibit that might cause a health hazard (see PC 1417.3 for special handling of toxic exhibits.) Note in minutes.
  - e) Any exhibit(s) returned are to be noted in minute order with name or agency retaining the exhibit(s) [PC 1417.2.]
- c. Motion for Judgment of Acquittal
  - 1) Prosecution concludes it's case-in-chief (or at the close of evidence on either side.)
  - 2) Defense makes a motion for the court to enter a judgment of acquittal based on the fact that the People failed to meet the burden of proof.
  - 3) Motion is made under PC 1118 in a court trial.
  - 4) Motion is made under PC 1118.1 in a jury trial.

**7. Closing Argument**

- a. Statements made by counsel in an attempt to persuade the jury, or the court, that the evidence proves the position of their client.
- b. Sequence:
  - 1) Prosecution/People
  - 2) Defense
  - 3) Prosecution/People's rebuttal

**8. Jury Instruction**

- a. Definition - written instructions to the jury pertaining to the law in the case.
- b. Selecting instructions:
  - 1) Counsel select jury instructions they feel pertain to the case.
  - 2) Court and counsel confer.
  - 3) Court hears argument regarding the instructions selected.
  - 4) Court rules as to the specific jury instructions that will be presented to the jury.
- c. All instructions must indicate the requesting party and be endorsed by the court. (CRC 229, PC 1127.)
- d. Refused and withdrawn instructions are retained by clerk for placement in the case file (PC 1127.)
- e. The agreed upon instructions (those to be given) are read to the jury by the Court.
- f. A clean copy of the given instructions, exclusive of any indication of the requesting party, are provided to the jury for reference during deliberations, upon request of the jury or discretion of court [PC 1093(f)]

**9. Jury Deliberations**

- a. Bailiff sworn to take charge of the jury.
- b. What goes in with the jury (PC 1137):
  - 1) A clean set of jury instructions, if requested by jury or ordered by court. (No indication of who requested the instruction)
  - 2) Verdict forms
    - a) Separate verdict forms (guilty or not guilty) for each count are provided.
    - b) Additional forms for lesser-included offenses, if applicable, are also included.
    - c) Content must conform to charging document.
  - 3) Exhibits
    - a) Exhibits received as evidence may go to the jury.
    - b) Exhibits that are marked for identification only do not go to the jury.
    - c) Sensitive exhibits (money, weapons, drugs, jewelry, or other valuables) should not go to the jury. The jury should request to see these items.
  - 4) Juror request/question blank forms
  - 5) Juror(s) own notes
- c. Alternate jurors
  - 1) Ordered to report to jury office and remain in jury lounge during deliberations.
  - 2) Ordered to be on telephone stand-by during deliberations.

- d. Notes Received from the Jury
  - 1) Note is given to the judge.
  - 2) Counsel is notified.
  - 3) Response prepared/hearing held:
    - a) Response may be in writing.
    - b) Jurors may be called back into the courtroom for a verbal response.
    - c) Jurors may request read-back of testimony [presence of judge for read-back not required (pc 1138.5.)]
  - 4) A minute entry is made regarding note/response.
  - 5) Note is numbered, filed and maintained in the court file.

**10. Verdict/Mistrial**

- a. Verdict
  - 1) Verdicts are reviewed by Court and given to the clerk. [PC 1151, 1157, 1158, 1158a]
  - 2) All dated and signed verdict forms are placed in count number order.
  - 3) Verdicts are read in open court with defendant, counsel, and all jurors present.
    - a) Reading includes county, court, and cause depending on court policy.
    - b) Presiding juror's title or signature and title will also be read depending upon court policy re: juror identification information.

- 4) At conclusion of verdicts, the court/clerk inquires of the jury:
  - a) Is this your verdict as read?
  - b) Jury responds as a group.
  - c) Polling the Jury
  - d) A formal process asking each juror individually whether they agree with the verdict.
  - e) May be requested by either party.
    - i) Use prepared jury list.
    - ii) Re-read the verdict.
    - iii) Ask jurors to answer yes or no to the questions: "Juror #, is this your verdict?"
    - iv) Follow this procedure for each verdict.
    - v) Exact procedure may vary; follow your court's instructions.
  - f) Polling may be waived in its entirety.
    - i) Verdict(s) is/are recorded.
    - ii) Waiver is noted in the minutes.
- 5) Jury is thanked and excused from this case.
- 6) Signed original verdicts are file stamped and placed in the court file in a confidential envelope.
- 7) Redacted/sanitized copies of signed verdict are placed in the court file.
- 8) Original unsigned verdicts are also kept in the court file. Do not throw away forms.

- b. Mistrial
  - 1) Jury informs court that they are unable to reach a verdict.
  - 2) Court declares a mistrial (Court obtains count/split.)
  - 3) Jury is thanked and excused from further service on this case.
  - 4) Case is sent back to Presiding/Supervising Department for new dates to be set. (The case must go to trial within 60 days from the date of the mistrial.)

**11. Post-Verdict Matters**

- a. Defendant, if found guilty, may waive a probation report and request immediate sentencing.
  - 1) Court will sentence defendant forthwith.
  - 2) See Sentencing Section for sentencing options.
- b. Defendant may make a motion for new trial.
  - 1) May be oral or written.
  - 2) Must be ruled upon prior to sentencing.
  - 3) See Sentencing Section for grounds to make a motion for new trial.

**12. Setting a Sentencing Date**

- a. Shall not be less than six hours nor more than five days after the verdict unless the defendant waives time.(PC 1449)
- b. The court may extend the time for not more than 10 days for the purpose of hearing or determining any motion for a new trial.

- c. The Court also may extend the time for not more than 20 judicial days if probation (for pre-sentencing report) is considered. Upon request of the defendant or the probation officer, that time may be extended for not more than 90 additional days.
  - 1) The defendant may request immediate sentencing, and the Court may sentence the defendant forthwith
  - 2) The Court may set a date for sentencing
    - i. If the case is being referred to the Probation Department for a pre-sentence report, the clerk should prepare and send a referral to the Probation Department
    - ii. If the case is being referred to the Probation Department, please refer to PC 1203d and PC 1203.10 for additional information

**13. Status of Defendant**

- a. Finding of not guilty, case dismissed:
  - 1) Defendant will be released from custody and a Release Order prepared.
  - 2) Defendant released on bail will have bail exonerated. (PC 1384)
- b. Finding of guilty, sentencing date set:

Court will review defendant's custody status.

  - 1) A defendant released on bail or or status must have that status revoked and be taken into custody, unless court finds good cause (pc 1166.)
    - a) Clerk will prepare a Remand Order for the defendant.
    - b) 3) Remand Order will include the amount of bail.
  - 2) An in custody defendant with bail set may be remanded on a "no bail" Remand Order pending sentencing.



## **C. COURT TRIALS**

1. A person who pleads not guilty to an infraction has the right to a trial before a commissioner or traffic referee. There is no right to a jury trial or to a court-appointed attorney. (PC 19.6)
2. The court clerk may call roll to determine which cases are contested, and arrange the calendar accordingly. For example, if an officer is appearing on multiple cases, they may be kept together and called one after another.
3. A court trial may proceed in absentia (without the presence of the defendant). The court may render a decision based on the officer's testimony.
4. The Court reviews the evidence and renders a decision.
5. The Court may take the case under submission and render a decision at a later date.

### **6. Infraction Court Trial Checklist**

- a. Welcome the parties to the courtroom.
- b. Call Roll. Sort calendar according to your court procedures.
- c. Judge may advise the defendants of their legal rights, the right to change plea, etc., may advise the defendants regarding the trial procedure.
- d. Determine if any defendant or witness will require an interpreter.
- e. The clerk will administer the oath to all witnesses who will testify.
- f. When each case is called, the judge will ask the defendant if his or her name on the calendar is his or her true name, advise of charges and the date of the offense.
- g. The clerk will then ask the officer to state his/her full name and to spell the last name for the record.
- h. The judge will ask the officer to proceed with his/her testimony, then the testimony of any other witnesses for the prosecution.

**Court Clerk Training Institute 2004**  
*Traffic Courtroom and Office Procedures*

---

V. Trials

- i. The defendant will have the opportunity to cross-examine each witness.
- j. On completion of the prosecution case, the defendant will put on his/her case, generally consisting of testimony.
- k. Upon completion of the defendant's case, opening argument, defendant's argument and closing arguments are allowed [*People v Douglas (1973) 31 CA3d Supp 26, 27-28, 106 CR611*]
- l. Matter is submitted for decision.
- m. Judge informs the parties of decision, or takes the matter under submission.

## **D. TRIAL BY DECLARATION**

### **1. Applicability of Trial by Declaration**

- n. This rule establishes the minimum procedural requirements for trials by written declaration under Vehicle Code section 40902.
- o. The procedures established by this rule shall be followed in all trials by written declaration under Vehicle Code section 40902.

### **2. Court Procedure for Trial by Declaration**

- a. **Request for Trial by Declaration:** The defendant shall file a *Request for Trial by Written Declaration* (form TR-205) with the clerk by the appearance date indicated on the *Notice to Appear* or the extended due date as provided in subdivision (2).
- b. **Written Declaration:** The *Request for Trial by Written Declaration* shall be filed in addition to defendant's written request for a trial by written declaration, unless defendant's request was made on the election form.
- c. **Bail Requirement:** The defendant shall deposit bail with the clerk by the appearance date indicated on the *Notice to Appear*.
- d. **Notice to Arresting Agency:** If the clerk receives defendant's *Request for Trial by Written Declaration* (form TR-205) and bail by the due date, the clerk shall deliver or mail to the arresting officer's agency *Notice and Instructions to Arresting Officer* (form TR-210) and *Officer's Declaration* (form TR-235). You may also send a copy of the notice to appear, case print or register of actions and specify a return date for receiving the officer's declaration.
- e. **Submission for Judicial Consideration:** After receipt of the officer's declaration, or at the close of the officer's return date if no officer's declaration is filed, the

clerk shall submit the case file with all declarations and other evidence received to the court for decision.

- f. **Notice of Decision of Trial by Written Declaration:** After the court decides the case and returns the file and decision, the clerk shall immediately deliver or mail the *Decision and Notice of Decision* (form TR-215) to defendant and arresting agency.
  
- g. **Request for New Trial:** If defendant files a *Request for New Trial (Trial de Novo)* (form TR-220) within 20 calendar days after the date of delivery or mailing of the *Decision and Notice of Decision*, the clerk shall set a trial date that shall be within 45 calendar days of receipt of defendant's written request for a trial de novo. The clerk shall deliver or mail to defendant and to the arresting officer's agency the *Order and Notice to Defendant of New Trial* (form TR-225). If defendant's request is not timely received, no trial de novo shall be held and the case shall be closed.
  
- h. **Notice of Decision:** The clerk shall deliver or mail the *Decision and Notice of Decision* (form TR-215) within 90 calendar days after the due date. Acts for which no specific time is stated in this rule shall be performed promptly so that the *Decision and Notice of Decision* can be timely delivered or mailed by the clerk. Failure of the clerk or the court to comply with any time limit shall not void or invalidate the decision of the court, unless prejudice to the defendant is shown.

**A. Filing Legal Documents/File Stamping**

FILED  
SUPERIOR COURT – TRACY  
  
04 JAN 27 AM 8:00  
ROSA JUNQUEIRO, CLERK  
  
BY \_\_\_\_\_  
DEPUTY

File stamping a document is one of the most common tasks performed by a clerk. Clerks are responsible for the documents that they file. Some have had to testify in court regarding documents that they have file stamped. Therefore, when file stamping, one must know:

1. The type of document.
2. The fees, if any, to be charged for its filing.
3. The computer input that is required.
4. Where the documents should be forwarded (to the file, court).
5. Some documents are file stamped and others are marked “Received.” This depends on the subject matter. In criminal matters, subpoenas are not file stamped, they are marked “Received.”
6. Documents should be file stamped on the top right hand corner of the first page of the document. If there is no space in the top right hand corner, the file stamp should be placed on the first page where there is space. When one file stamps, one should avoid obliterating the writings in the document. The file stamp pad should always be well inked with purple or black ink.
7. Government Code section 69846.5. The clerk of the superior court shall endorse on each paper filed with the court the day, month, and year it is filed.

**B. The Facsimile Stamp**

A facsimile stamp bears the handwritten signature of an individual, such as a judge. It can be used as a substitute for the actual handwritten signature but when used, the clerk must initial his/her initials next to it.

Government Code 69848. The clerk of the superior court may use a facsimile signature on any court documents regularly maintained in the ordinary course of business for the purpose of filing or certifying those documents, provided the authorized deputy initials the facsimile signature.

**C. Register of Actions**

A recording of records (official records). Most recordings are automated although handwritten ledgers can still be found in some offices.

Government Code section 69845. The clerk of the superior court may keep a register of actions in which shall be entered the title of each cause, with the date of its commencement and a memorandum of every subsequent proceeding in the action with its date.

Government Code section 69845.5. In lieu of maintaining a register of actions as described in Section 69845, the clerk of the superior court may maintain a register of actions by preserving all the court records filed, lodged, or maintained in connection with the case.

**D. The Seal**



The seal is an official impression placed on various documents.

1. Government Code section 68074. Each court shall have a seal.
2. Government Code section 68074.1. The seal of any superior or municipal court may be affixed by a seal press or stamp which will print or emboss a seal which will reproduce legibly under photographic methods.
3. Government Code section 68076. The seals of the superior courts shall:  
(a) Be circular. (b) Be not less than one and one-fourth inches in diameter.  
(c) Have in the center any word, words, or design adopted by the judges of the superior court. (d) Have inscribed around the central words or design "Superior Court \_\_\_\_, California," inserting the name of the county. The seal of any such court, which has been adopted before April 1, 1880 shall be the seal of such court until another is adopted.
4. Government Code section 68080. The clerk of the court shall keep the seal of the court.
5. Government Code section 68080.5. (a) A person who uses or allows to be used any reproduction or facsimile of the seal of the California Supreme Court, an appellate court, or a superior court in any campaign literature or mass mailing, as defined in Section 82041.5, with intent to deceive the voters, is guilty of a misdemeanor. (b) For purposes of this section, the use of a reproduction or facsimile of a seal in a manner that creates a misleading, erroneous, or false impression that the document is authorized by a public official is evidence of intent to deceive.
6. Code of Civil Procedure section 14. When the seal of a Court, public officer, or person is required by law to be affixed to any paper, the word "seal" includes an impression of such seal upon the paper alone as well as upon wax or a wafer affixed thereto.
7. Code of Civil Procedure section 153. Except as otherwise expressly provided by law, the seal of a court need not be affixed to any proceeding therein, or to any document, except to the following: (a) A writ. (b) A summons. (c) A warrant of arrest.

VI. Office Procedures

8. Code of Civil Procedure section 1930. A seal is a particular sign, made to attest, in the most formal manner, the execution of an instrument.
9. Code of Civil Procedure section 1931. Section Nineteen Hundred and Thirty-one. A public seal in this State is a stamp or impression made by a public officer with an instrument provided by law, to attest the execution of an official or public document, upon the paper, or upon any substance attached to the paper, which is capable of receiving a visible impression. A private seal may be made in the same manner by any instrument, or it may be made by the scroll of a pen, or by writing the word "seal" against the signature of the writer. A scroll or other sign, made in a sister State or foreign country, and there recognized as a seal, must be so regarded in this State.
10. Civil Code section 1193. Seal and Signature. Officers taking and certifying acknowledgments, or proof of instruments for record, must authenticate their certificates by affixing thereto their signatures, followed by the names of their offices; also, their seals of office, if by the laws of the state or country where the acknowledgment or proof is taken, or by authority of which they are acting, they are required to have official seals.
11. Penal Code section 1217. Death Sentence-Delivery of Warrant to Warden. When judgment of death is rendered, a commitment signed by the judge, and attested by the clerk under seal of the court must be drawn and delivered to the sheriff.



**Court Clerk Training Institute 2004**  
*Traffic Courtroom and Office Procedures*

---

VI. Office Procedures

**E. Certified copies**

THE ANNEXED INSTRUMENT IS A CORRECT COPY  
OF THE ORIGINAL ON FILE IN MY OFFICE.  
CAUTION: SEAL MUST BE IN PURPLE.

ATTEST \_\_\_\_\_  
ROSA JUNQUEIRO

Clerk of the Superior Court  
In and for the County of  
San Joaquin State of California  
Tracy Branch

By \_\_\_\_\_ Deputy

1. Evidence Code section 1531. For the purpose of **evidence**, whenever a copy of a writing is attested or certified, the attestation or certificate must state in substance that the copy is a correct copy of the original, or of a specified part hereof, as the case may be.
2. Government Code section 26831. The county clerk may charge a reasonable fee to cover the cost of preparing copies of any record, proceeding, or paper on file in his office.
3. Government Code section 26833.1. The fee for certifying a copy of any paper, record, or proceeding on file in the office of the clerk of any court is six dollars (\$6).
4. Government Code section 26854. The fee for searching records or files is five dollars (\$5) for each file.

**F. Subpoena/Subpoena Duces Tecum**

The clerk, or a judge, shall issue a subpoena or subpoena duces tecum signed and sealed but otherwise in blank to a party requesting it, who shall fill it in before service. An attorney at law who is the attorney of record in an action or proceeding, may sign and issue a subpoena to require attendance before the court in which the action or proceeding is pending or at the trial of an issue therein, or upon the taking of a deposition in an action or proceeding pending therein; the subpoena in such a case need not be sealed. An attorney at law who is the attorney of record in an action or proceeding, may sign and issue a subpoena duces tecum to require production of the matters or things described in the subpoena.

**CCP1985(c.)**

Blank Subpoena or Subpoena Duces Tecum Issued by Court:

1. The case caption and case number must be entered prior to issuance.
2. Sign and seal the subpoena. Do not file stamp.
3. Return the Subpoena to the requesting party to complete and have served.

Returned Subpoena Duces Tecum with Proof of Service:

1. File stamp the front of the Subpoena Duces Tecum.
2. Make entry in computer system or on docket:

Example: Subpoena Duces Tecum issued for (medical records) from St. Joseph=s Hospital filed with proof of service attached.

3. Place the original in the courts file and return any copies to submitting party.

Returned Subpoena with Proof of Service:

1. File stamp the front of the Subpoena.
2. Make entry in computer or on docket

Example: Subpoena returned and filed.

3. Place the original in the courts file and return any copies to submitting party.

Subpoena with sealed records attached:

1. Place your “Received” stamp on the subpoena. It should be attached to an envelope with sealed records inside.
2. Affix signature stamp. Do not open envelope unless you need case number, name, or agency name that sent the documents. Reseal. Do not read or review materials.
3. Enter and place in file.

The process by which the attendance of a witness before a court or magistrate is required is a subpoena. It may be signed and issued by any of the following:

(1) A magistrate before whom a complaint is laid or his clerk, the district attorney or his investigator, or the public defender or his investigator, for witnesses in the state.

(2) The district attorney, his investigator, or, upon request of the grand jury, any judge of the superior court, for witnesses in the state, in support of an indictment or information, to appear before the court in which it is to be tried.

(3) The district attorney or his investigator, the public defender or his investigator, the clerk of the court in which a criminal action is to be tried, or, if there is no clerk, the judge of the court. The clerk or judge shall, at any time, upon application of the defendant, and without charge, issue as many blank subpoenas, subscribed by him, for witnesses in the state, as the defendant may require.

(4) The attorney of record for the defendant. **PC 1326.**

#### Disposal of Records (Subpoena Duces Tecum)

Unless the parties to the proceeding otherwise agree, or unless the sealed envelope or wrapper is returned to a witness who is to appear personally, the copy of the records shall remain sealed and shall be opened only at the time of trial, deposition, or other hearing, upon the direction of the judge, officer, body, or tribunal conducting the proceeding, in the presence of all parties who have appeared in person or by counsel at the trial, deposition, or hearing. Records which are original documents and which are not introduced in **evidence** or required as part of the record shall be returned to the person or entity from whom received. Records which are copies may be destroyed. **EC 1560(d)**

**G. Confidential Documents/Guidelines**

AIDS Test Results Medical Reports

Penal Code section 1202.1; Government Code section 6254(c).

CII (Criminal Identification and Information) and Rap Sheets

Government Code sections 6254(f); 6255; Penal Code sections 11076; 11105; 13300.

Criminal Grand Jury Proceedings

Penal Code 924.

All proceedings confidential until defendant is arrested.

DMV (Department of Motor Vehicle) Printouts

Vehicle Code sections 1808.5; 1808.21(d); 1808.7; 1808.21(a); 4750.2(a); 1653.5.

Financial Records -Defendant's Statement of Assets

Government Code sections 6254(d), (h), (i), (k), (n), (o), (x); 6254.5(o)-(h); Penal Code section 1202.4. Statement of Assets available to victim when restitution ordered.

Funds for Indigent Defendants for Defense of Capital Cases

Penal Code section 987.9.

Grand Jury Transcript

Penal Code section 938.1(b).

Accessible 10 days after delivery to attorneys unless ordered sealed.

Jury Questionnaires

Code of Civil Procedure section 237.

All seated jurors and all lists.

Letters to Judge from victims or defendant's family/friends regarding defendant's character

Letters considered at time of sentencing should be sealed with Probation Officer's Report.

Probation Officer's Report

Penal Code section 1203.05; Government Code section 6254(f), 6255

Open to public for 60 days after sentencing. After 60 days open only to District Attorney or any person authorized or by Court order.

Search Warrants

Government Code sections 6254(d), (h), (i), (k), (n), (o), (x), 6254.5 (o) through (h);

Penal Code sections 987(c); 1534(a).

Open to public 10 days after filing or upon filing of the Return unless ordered sealed.

Confidential information and records; disclosure; consent

Welfare and Institutions Code section 5328.

Documents that are marked with this code are deemed to be confidential.

**H. CERTIFICATE OF IDENTITY THEFT (PC 530.6)**

A person who reasonably believes that he or she is the victim of identity theft may petition a court, or the court, on its own motion or upon application of the prosecuting attorney, may move, for an expedited judicial determination of his or her factual innocence, where the perpetrator of the identity theft was arrested for, cited for, or convicted of a crime under the victim's identity, or where a criminal complaint has been filed against the perpetrator in the victim's name, or where the victim's identity has been mistakenly associated with a record of criminal conviction.

A person who wishes to petition for a Certificate of Identity Theft must first contact the Office of the Attorney General for an information packet and to be qualified for this procedure. The contact number for the victim is:

STATE OF CALIFORNIA  
DEPARTMENT OF JUSTICE  
BCIA/COMMAND CENTER RM G210  
P O BOX 903417  
SACRAMENTO CA 94203-4170  
ATTN: ID THEFT REGISTRY  
1 (888) 880-0240

All forms enclosed in the packet must be completed, along with a fingerprint card or LIVESCAN service, returned to the address listed above.

Any judicial determination of factual innocence made pursuant to this section may be heard and determined upon declarations, affidavits, police reports, or other material, relevant, and reliable information submitted by the parties or ordered to be part of the record by the court.

Where the court determines that the petition or motion is meritorious and that there is no reasonable cause to believe that the victim committed the offense for which the perpetrator of the identity theft was arrested, cited, convicted, or subject to a criminal complaint in the victim's name, or that the victim's identity has been mistakenly associated with a record of criminal conviction, the court shall find the victim factually innocent of that offense. If the victim is found factually innocent, the court shall issue an order certifying this determination. 530.6(b) PC

After a court has issued a determination of factual innocence pursuant to this section, the court may order the name and associated personal identifying information contained in court records, files, and indexes accessible by the public deleted, sealed, or labeled to show that the data is impersonated and does not reflect the defendant's identity. 530.6(c)PC (A petition to seal records pursuant to section 851.8 PC is enclosed in the packet from DOJ)

A court that has issued a determination of factual innocence pursuant to this section may at any time vacate that determination if the petition, or any information submitted in support of the petition, is found to contain any material misrepresentation or fraud. 530.6(d) PC

**Court Clerk Training Institute 2004**  
*Traffic Courtroom and Office Procedures*

VI. Office Procedures

**CONFIDENTIAL (SEE RULE 4.601)**

CR-150

<small>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address):</small>    <small>TELEPHONE NO. (Optional):</small> <span style="margin-left: 100px;"><small>FAX NO. (Optional):</small></span> <small>E-MAIL ADDRESS (Optional):</small> <small>ATTORNEY FOR (Name):</small>	<small>FOR COURT USE ONLY</small>
<p style="text-align: center;"><b>PEOPLE OF THE STATE OF CALIFORNIA</b> VS.</p> <p>DEFENDANT:</p>	
<b>CERTIFICATE OF IDENTITY THEFT: JUDICIAL FINDING OF FACTUAL INNOCENCE</b> (Penal Code § 530.6)	<small>CASE NUMBERS:</small>

<small>Warrant No. (if any):</small> _____	<small>Violation Date:</small> _____
--	--------------------------------------

1. Petitioner Information:

Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Sex: ☐ M ☐ F Ht.: \_\_\_\_\_ Wt.: \_\_\_\_\_ Hair Color: \_\_\_\_\_ Eye Color: \_\_\_\_\_ Race: \_\_\_\_\_ Age: \_\_\_\_\_

Booking No.: \_\_\_\_\_ Driver's License or Identification No.: \_\_\_\_\_

Other Identifying Information: \_\_\_\_\_

2. The court finds that:

- ☐ Another person was arrested for or convicted of a crime under the identity of the petitioner in this case.  
☐ The petitioner's identity has been mistakenly associated with a record of the criminal conviction in this case.  
☐ The petitioner is not the person for whom the warrant in this case was issued.

**Accordingly, the court finds that the petition is meritorious and that there is no reasonable cause to believe that the petitioner committed the offense in this case, and that the petitioner is factually innocent of that offense.**

Date: \_\_\_\_\_

\_\_\_\_\_  
JUDICIAL OFFICER

**CERTIFICATION**

(SEAL)	<p>I certify that this document is a correct copy of the original on file in my office.</p> <p>Date: _____</p> <p>Clerk, by _____</p> <p style="text-align: center;">(DEPUTY)</p>
--------	---

1. The box to the right contains the petitioner's

- ☐ right thumbprint  
☐ other print (specify): \_\_\_\_\_

2. The print was taken on (date): \_\_\_\_\_

3. The print was taken by

- a. Name: \_\_\_\_\_  
b. Position: \_\_\_\_\_  
c. Badge or serial No.: \_\_\_\_\_

**ANY ALTERATION RENDERS THIS FORM VOID.**

**CONFIDENTIAL (SEE RULE 4.601)**

- I. Writs -- See Exemplars at end of section.**
- J. Order for Restitution and Abstract of Judgment – See Exemplars at end of section.**
- K. Notice of Appeal – Traffic Infractions – Exemplars at end of section**